2025 INSC 421

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1632-1634 OF 2022

PIRAMAL CAPITAL AND HOUSING FINANCE LIMITED (FORMERLY KNOWN AS DEWAN HOUSING FINANCE CORPORATION LIMITED)

….APPELLANT (S)

VERSUS

63 MOONS TECHNOLOGIES LIMITED & OTHERS

….RESPONDENT (S)

WITH

C.A. Nos. 1707-1712 of 2022

WITH

DIARY No. 6037 of 2022

WITH

C.A. Nos. 2989-2991 of 2022

WITH

C.A. No. 2402 of 2022

WITH

C.A. Nos. 2413-2415 of 2022

WITH

C.A. No. 2567 of 2022

WITH

C.A. Nos. 2987-2988 of 2022

WITH

C.A. Nos. 8123-8125 of 2022

WITH

C.A. Nos. 3694-3695 of 2022

WITH

C.A. No. 6286 of 2022

WITH

C.A. No. 2396 of 2022

INDEX

GLOSSARY

1. **BR Act – The Banking Regulation Act, 1949**
2. **CD – Corporate Debtor**
3. **CIRP – Corporate Insolvency Resolution Process**
4. **CoC – Committee of Creditors**
5. **DHFL – Dewan Housing Finance Corporation Limited**
6. **EOI – Expression of Interest**
7. **FD Holders – Fixed Deposit Holders**
8. **FSP – Financial Service Provider**
9. **FSP Rules – Financial Service Provider Rules, 2019**
10. **GT – M/s. Grant Thornton**
11. **HFC – Housing Finance Companies**
12. **IBC – The Insolvency and Bankruptcy Code, 2016**
13. **NBFC – Non-Banking Financial Companies**
14. **NCD Holders – Non-Convertible Debenture Holders**
15. **NCLAT – National Company Law Appellate Tribunal**
16. **NCLT/ Adjudicating Authority – National Company Law Tribunal**
17. **NHB Act – The National Housing Bank Act, 1987**
18. **Piramal Capital – Piramal Capital and Housing Finance Limited**
19. **PRAs – Prospective Resolution Applicants**
20. **RA – Resolution Applicant**
21. **RBI Act – The Reserve Bank of India Act, 1934**
22. **Regulations, 2016 – The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016**
23. **RFRP – Request for Resolution Plan Proposal**
24. **RP – Resolution Plan**
25. **SRA – Successful Resolution Applicant**

J U D G M E N T

BELA M. TRIVEDI, J.

1. In the captioned Appeals, the contextual facts encompass the issues involved and permit analogous adjudication. Hence, they are disposed of by this common judgment and order.

(I) THE DETAILS AND CATEGORIES OF THE APPEALS: -

i. Civil Appeal Nos. 1632-1634 of 2022 have been filed by the Appellant Piramal Capital and Housing Limited (Piramal Capital), Successful Resolution Applicant (SRA) challenging the common judgment and order dated 27.01.2022 passed by the National Company Law Appellate Tribunal, New Delhi, (NCLAT) in Company Appeal (AT) (Insolvency) [**hereinafter referred to as Company Appeal**] Nos. 454-455 and 750 of 2021, only to the extent that it modified the Resolution Plan (RP) by holding that the RP that permitted the SRA to appropriate recoveries, if any, from Avoidance applications filed under Section 66 of the Insolvency and Bankruptcy Code (IBC) ought

to be set aside and the Resolution Plan be sent back to the Committee of Creditors (CoC) for reconsideration on that aspect.

ii. Civil Appeal Nos. 2989-2991 of 2022 have been filed by the Appellant Union Bank of India challenging the said common judgment and order dated 27.01.2022 passed by the NCLAT in Company Appeal Nos. 454-455 and 750 of 2021.

iii. Civil Appeal Nos. 3694-3695 of 2022 have been filed by the Appellant 63 Moons and Technologies Limited, challenging the said common judgment and order dated 27.01.2022 passed by the NCLAT in Company Appeal No. 454 of 2021 and 455 of 2021, only to the extent of the sentence/observation in the impugned order that "The Resolution Plan be sent back to the CoC for reconsideration on this aspect."

iv. Civil Appeal Nos. 2413-2415 of 2022 have been filed by the Appellants Vinay Kumar Mittal and Others, claiming to be the Fixed Deposit Holders (FDH) of the Corporate Debtor (CD) – Dewan Housing Finance Corporation Limited (DHFL), challenging the common judgment and order dated 27.01.2022 passed by the NCLAT in Company

Appeal Nos. 506-507 and 516 of 2022, whereby the NCLAT has held that Section 238 of IBC overrides the Reserve Bank of India Act, 1934 (RBI Act), and the National Housing Bank Act, 1987 (NHB Act), and that Adjudicating Authority/NCLT had not committed any error in approving the RP that proposed extinguishing Claims of the Fixed Deposits, without discharging their payments in full to the FDHs.

v. Civil Appeal arising out of Diary No. 6037 of 2022 has been filed by the Appellants Raghu K.S. and Others (claiming to be the Fixed Depositors/Investors in the schemes floated by DHFL), challenging the judgment and order dated 07.02.2022 passed by the NCLAT in Company Appeal No. 538 of 2021, whereby the NCLAT disposed of the Appeal by holding that the issues raised in the said Appeal were the same as raised in Company Appeal Nos. 506, 507 and 516 of 2022 decided on 27.01.2022.

vi. Civil Appeal No. 2402 of 2022 has been filed by the Appellant Uttar Pradesh State Power Corporation Contributory Provident Fund Trust challenging the judgment and order dated 27.01.2022 passed by

the NCLAT in Company Appeal No. 760 of 2021, whereby the NCLAT has dismissed the Appeal of the Appellant and confirmed the order dated 07.06.2021 passed by the NCLT in M.A. No. 416/2020 in C.P.(IB) No. 4258/MB/2019 in C.P. No. 4258/2019, rejecting the prayer of the Appellant seeking repayment of the entire amounts of matured fixed deposits.

vii. Civil Appeal Nos. 8123-8125 of 2022 have been filed by the Appellants Senbagha Vivek A and Another (who were not the Party before the NCLAT), challenging the impugned common judgment and order dated 27.01.2022 passed by the NCLAT in Company Appeal Nos. 506, 507 and 516 of 2022.

viii. Civil Appeal No. 6286 of 2022 has been filed by the Appellant THDC India Limited Employee Provident Fund challenging the impugned judgment and order dated 04.02.2022 passed by the NCLAT in Company Appeal No. 90 of 2022, whereby it has been held by the NCLAT *inter alia* that the commercial wisdom of the CoC while approving the RP, which has also received the approval of the Adjudicating Authority as well as the Appellate

Tribunal, cannot be allowed to be questioned in the Appeal.

ix. Civil Appeal No. 2396 of 2022 has been filed by the Appellant Uttar Pradesh State Power Sector Employees Trust challenging the impugned judgment and order dated 27.01.2022 passed by the NCLAT in Company Appeal No. 759 of 2021.

x. Civil Appeal Nos. 1707-1712 of 2022 have been filed by the Appellant Kapil Wadhawan (KW), an erstwhile Promoter and Director of DHFL challenging the impugned judgment and order dated 14.02.2022 passed by the NCLAT, in Company Appeal No. 539 of 2021, dismissing the KW's challenge to the RP of Piramal Capital approved by the NCLT vide Order dated 07.06.2021 in I.A. No. 449 of 2021 in CP (IB) No. 4258/2019. The said Appeal was dismissed by the NCLAT on the ground that it had become infructuous in view of the judgment and order dated 27.01.2022 in Company Appeal Nos. 454, 455 and 750 of 2021. The Appellant - KW has also challenged the order dated 27.01.2022 passed by the NCLAT in Company Appeal No. 647 of 2021, wherein the NCLAT has held *inter alia* that the

Appellants being an erstwhile Directors who had vacated their offices on the supersession of the Board of Directors by the RBI under Section 45-IE (4)(a) of the RBI Act, cannot claim their entitlement to participate in the CoC of the CD, and that a superseded Director from the Board of Directors cannot interfere in the Company's affairs, *per contra* a suspended Director always remains on the erstwhile Board of the Company and assist the IRP/ RP as per requirement. The Appellant - KW has also challenged the judgment and order dated 27.01.2022 passed by the NCLAT in Company Appeal Nos.370, 376-377 and 393 of 2021, whereby the NCLAT has set aside the order dated 19.05.2021 passed by the NCLT, which had directed the CoC to consider and vote on 2nd Settlement Proposal of KW.

xi. Civil Appeal No. 2567 of 2022 has been filed by the Appellant Dheeraj Wadhawan (DW) challenging the impugned judgment and order dated 27.01.2022 passed by the NCLAT in Company Appeal No. 785 of 2020, whereby the NCLAT has held that the Appellant – DW was not entitled to participate in the CoC of DHFL.

xii. Civil Appeal Nos. 2987-2988 of 2022 have been filed by the Appellant Piramal Capital challenging the impugned common judgment and order dated 27.01.2022 passed by the NCLAT in Company Appeal No. 785 of 2020 and 647 of 2021, to the extent NCLAT has held that the RP does not remain confidential after its approval by the Adjudicating Authority and that a certified copy of such RP could be obtained by all and sundry as per Rules.

2. As per the Order passed by this Court on 26.09.2024, all these Appeals were heard, after categorizing them into the following three categories: -

Sr. No.	Name of the matter	Party/ CoC
I. APPEALS RE AVOIDANCE APPLICATIONS- Impugned Order dated 27.01.2022 passed by the Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 454-455 and 750 of 2021 in relation to treatment of recoveries from the Avoidance applications provided under the approved Resolution Plan by Piramal Capital & Housing Finance Limited in the insolvency of Dewan Housing Finance Corporation Limited		
1.	Piramal Capital & Housing Finance Limited (Formerly known as Dewan Housing Finance Corporation Limited) v 63 Moons Technologies Limited and Ors.	Civil Appeal Nos.1632-1634 of 2022
2.	Union Bank of India v 63 Moons Technologies Limited and Ors	Civil Appeal Nos.2989–2991 of 2022

3.	63 Moons Technologies Limited v Piramal Capital and Housing Finance Corporation Limited (Formerly known as Dewan Housing Finance Corporation Limited) & Ors	Civil Appeal Nos.3694-3695 of 2022
II. <u>APPEALS BY FD HOLDERS / NCD HOLDERS-</u> -(a)Impugned Order dated 27.01.2022 passed by the Hon'ble NCLAT in Company Appeal (AT) (INS) No. 506, Company Appeal (AT)(INS) No. 507, and Company Appeal (AT) (INS) No.516 of2022; (b) Impugned common order dated 27.01.2022 passed by Hon'ble NCLAT in Company Appeal (AT) (INS) No. 759 of 2021 and Company Appeal (AT) (INS) No. 760of 2021; (c) Impugned Order dated 07.02.2022 passed by Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 538 of2021; (d) Impugned Order and Judgment dated 04.02.2022 in Company Appeal (AT) (Ins) No. 90 of 2021 challenging the payment made to the FD Holders/NCD Holders under the approved Resolution Plan by Piramal Capital & Housing Finance Limited.		
1.	Raghu KS and Ors. v Piramal Capital and Housing Finance Limited & Ors	Diary No. 6037 of 2022
2.	Vinay Kumar Mittal & Ors. V. Dewan Housing Finance Corporation Ltd. &Ors	Civil Appeal Nos.2413-2415 of 2022
3.	Uttar Pradesh State Power Sector Employees Trust v Dewan Housing Finance Corporation Limited & Anr.	Civil Appeal No.2396 of 2022 & Civil Appeal No.2402 of 2022
4.	U.P. State Power Corporation Contributory Provident Fund Trust v. Dewan Housing Finance Corporation Limited and Anr.	"
5.	Senbagha Vivek A. & Anr v Dewan Housing Finance Corporation Ltd. & Anr.	Diary No.11104 of 2022/ Civil Appeal Nos.8123-8125 of 2022

6.	THDC India Limited Employee Fund v The Administrator, Dewan Housing Finance Corporation Ltd.	Civil Appeal No.6286 of 2022
III. <u>APPEALS BY EX PROMOTERS</u>- (a) Impugned Order dated14.02.2022 passed in Company Appeal (AT) (Ins) No. 539of 2021 approving the Resolution Plan; (b) Impugned Order dated 27.01.2022 passed in Company Appeal (AT)(Ins) No. 785 of 2020 and 647 of 2021 holding that the Appellant does not have the right to attend CoC meetings or get a copy of the Resolution Plan approved by the CoC; (c) Impugned Order dated 27.01.2022 passed in Company Appeal (AT) (Ins) No. 370 of 2021, 376-377of 2021, 393 of 2021 which set aside the order directing CoC to consider and vote on the second settlement proposal submitted by Appellant		
1.	Kapil Wadhawan v R. Subramaniakumar and Ors.	Civil Appeal Nos.1707-1712 of 2022
2.	Piramal Capital and Housing Finance Limited (Formerly known as Dewan Housing Finance Corporation Limited) v Dheeraj Wadhawan and Anr.	Civil Appeal Nos.2987-2988 of 2022
3.	Dheeraj Wadhawan v The Administrator	Civil Appeal No.2567 of 2022

(II) <u>FACTUAL BACKGROUND</u>

3. In these long-drawn proceedings, the Factual matrix may be summarized as under: -

i. The DHFL was a housing finance company and a non-banking financial company regulated under the provisions of NHB Act and RBI Act, engaged in the business of providing housing finance services

to retail customers, including under the Pradhan Mantri Awas Yojana (under the credit linked subsidy scheme) as well as certain project loans, mortgage finance and construction loans etc. The DHFL had, for conducting its business availed financial assistance through a range of instruments including *inter alia* rupee loans, external commercial borrowings, non-convertible debentures, perpetual debentures, subordinate debt, public deposits etc. from banks, financial institutions, other lenders like insurance companies, mutual funds, provident funds, pension funds and individuals. The DHFL was accused of committing India's one of the biggest financial scams, worth thousands of crores of rupees, involving accusation of loan frauds, money laundering, creating web of fake borrowers and shell companies etc.

ii. The RBI in exercise of its powers conferred under Section 45-IE (1) of RBI Act, superseded the Board of Directors of DHFL, on being satisfied that DHFL had conducted its affairs detrimental to the interest of its depositors and creditors, and appointed one Shri R. Subramaniakumar, Ex-MD and CEO of the

Indian Overseas Bank, vide communication dated 20.11.2019.

iii. The RBI then on 29.11.2019 filed a Company Petition under Section 227 read with Section 239 (2) (zk) of IBC before the NCLT, for initiating CIRP proceedings.

iv. The Adjudicating Authority – NCLT on 03.12.2019 directed commencement of CIRP of the CD – DHFL and confirmed the appointment of Mr. R. Subramaniakumar as the Administrator to perform all functions of the Resolution Professional under the IBC. On 05.12.2019, the Administrator, by issuing a public announcement, called upon the creditors of the CD to submit their claims with proof on or before 17.12.2019.

v. The Administrator received the claims worth Rs.82,247 Crores. The Administrator, after collating all claims received against the CD and determining of financial position of the CD, constituted CoC on 24.12.2019. The Administrator, on 28.01.2020 issued an invitation for submissions of Expression of Interests (EOI) and Form 'G' for submission of RPs for the CD in accordance with the IBC and the relevant Rules and Regulations

made thereunder. Accordingly, the Administrator received 24 EOIs from the PRAs.

vi. The Administrator had appointed M/s. Grant Thornton (GT) as Transaction Auditors for unearthing the transactions under Section 43 to 51 and 66 of IBC.

vii. The GT after conducting the transaction audit, submitted a report to the Administrator, containing particulars of preferential, undervalued, fraudulent, and extortionate transactions entered into by DHFL, which could be set aside/ avoided under the said provisions of IBC. The Administrator, based on the said report of GT, filed eight Applications before the NCLT regarding the Preferential, Undervalued, and Extortionate transactions, and the Applications with regard to the Fraudulent and Wrongful trading. The said Applications are pending for adjudication by the NCLT. The total amount involved in the Avoidance Applications pending before the NCLT is about Rs.45,050/- Crores.

viii. On 02.03.2020, the Administrator issued a Request for Resolution Plan Proposal (RFRP) for DHFL in accordance with Regulation 36B of CIRP

Regulations, 2016. The said RFRP was revised by the Administrator, and the revised RFRP was issued on 17.03.2020.

ix. However, thereafter considering the complexities involved with respect to the transactions forming part of Section 66 application, the CoC in its Seventh meeting on 10.09.2020 decided that the RFRP may be suitably modified to incorporate the language which was in the mutual interest of the CoC members and the RA, by incorporating that the PRAs may ascribe a value to the transactions to all the transactions that are being filed under Section 66 and also propose the manner of dealing with any recoveries therefrom.

x. On 16.09.2020, pursuant to the discussion with the CoC, the Administrator issued a revised and final version of the RFRP titled "Invitation for Submissions of Resolution Plan for Dewan Housing Finance Corporation Limited" **("RFRP dated 16 September 2020")** in accordance with Regulation 36B of the CIRP Regulations.

xi. On 16.10.2022, following the issuance of the RFRP dated 16 September 2020, the Piramal Capital submitted the RP dated 16.09.2020 for the

consideration of the Administrator/CoC. The Piramal Capital was initially keen on only taking over the retail assets of the CD and accordingly, submitted its RP dated 16.09.2020 for Group A assets under Option II (i.e., retail assets of the CD). Under this RP, the Piramal Capital offered an amount of approx. INR 15,000 Crores (plus an amount of 10% for FDH).

xii. On 09.11.2020, based on further discussions and upon requests from the Administrator/ CoC to all PRAs, the Piramal Capital revised its RP and submitted modified RP on 09.11.2020 (offering an amount of INR 23,700 Crores) and on 17.11.2020 (offering an amount of INR 27,500 Crores), respectively under Option II for Group A (retail assets) of the CD.

xiii. On 22.12.2020, upon the request of the CoC, the Piramal Capital submitted a revised and final RP offering a total consideration of INR 37,250 Crores comprising cash and non-cash considerations. Additionally, it also submitted a RP under Option II for Group A (retail assets) of the CD, it offered an aggregate amount of INR 27,200 Crores.

xiv. On 31.12.2020, the erstwhile Director Kapil Wadhawan filed I.A. No. 2431 of 2020 under Section 60(5) of the Code praying for a direction for RBI to place before CoC the 2nd Settlement proposal for consideration.

xv. On 15.01.2021, all compliant resolution plans (including the SRA's RP) were put to vote during the voting window. The 63 Moons voted in favour of the RP within its class of debenture holders and the RP was approved by a majority of 98.94% votes of the debenture holders. On the basis of the same, the Authorised representative of the class of debenture holders (M/s. Catalyst Trusteeship Limited) voted in favor of the RP before the CoC. Resultantly, the RP of Piramal was approved by an overwhelming majority of the CoC with 93.65 % votes.

xvi. On 24.02.2021, following the approval of the RP by the CoC, the Administrator filed an I.A. No. 449 of 2021 ("Plan Approval Application") before the NCLT seeking approval of the RP under Section 31 of the Code.

xvii. On 05.03.2021 – The 63 Moons filed an I.A. No. 623 of 2021 in the Plan Approval Application before

the NCLT *inter alia* challenging the provisions of the RP which provided that the Section 66 Recoveries will go to the benefit of the SRA.

xviii. On 13.05.2021, the Plan Approval Application and I.A. No. 623 of 2021 were reserved for orders.

xix. The NCLT vide its Order dated 19.05.2021 allowed the I.A. No. 2431 of 2020 filed by the erstwhile Director and directed the Administrator to place the 2nd Settlement Proposal before the CoC for consideration and voting within 10 days.

xx. On 23.05.2021, the Administrator, CoC and Piramal filed Appeals under Section 61 of the Code, being Company Appeal Nos. 370 of 2021, 376-77 before the NCLAT challenging the order dated 19.05.2021.

xxi. On 25.05.2021, the NCLAT while issuing notice stayed the NCLT order dated 19th May, 2021. Further, the NCLAT vide the order directed the NCLT to decide the I.A. No. 449 of 2021 (for approval of the RP).

xxii. On 06.06.2021, Mr. Kapil Wadhawan filed an I.A. No.1229 of 2021 before the NCLT for consideration of his objections to the RP.

xxiii. On 07.06.2021, the NCLT passed an order granting its approval to the Plan Approval Application thereby approving the RP. The NCLT vide a separate order, dismissed the I.A. No. 623 of 2021 filed by the 63 Moons. The NCLT refused to interfere with the RP *inter alia* on the ground that the CoC comprising of 77 financial creditors decided in its commercial wisdom to give away the Section 66 Recoveries to the SRA after a hard bargain in exchange of a lump sum resolution amount of INR 37,250 Crores.

xxiv. On 14.06.2021 & 24.06.2021, the 63 Moons filed two separate Company Appeals, being No. 454 and 455 of 2021 before the NCLAT challenging the orders passed by the NCLT in the Plan Approval Application and I.A. No. 623 of 2021 on almost identical grounds. These Appeals were tagged and heard together. Additionally, vide I.A. No. 1173 and 1170 of 2021 filed in the Company Appeal No. 455 and 454 of 2021 respectively, the 63 Moons sought an interim stay on execution of the approved RP.

xxv. On 15.07.2021, erstwhile Promoter KW preferred Company Appeal No. 539 of 2021 before the NCLAT seeking a prayer to set aside the RP.

xxvi. On 23.07.2021, the NCLAT dismissed the 63 Moons' interim application for a stay on execution of the approved RP. Following this, the 63 Moons approached this Court vide Civil Appeal Nos. 4672-4673 of 2021.

xxvii. On 03.09.2021 - Roopjyot & Ors. filed a Company Appeal No. 750 of 2021 before the NCLAT challenging the Plan Approval Order raising grounds similar to those which were raised by the 63 Moons. This Appeal was also tagged with the Company Appeal No. 455 and 454 of 2021 filed by the 63 Moons. Pertinently, this was first time that any challenge was raised by Roopjyot & Ors. against the RP.

xxviii. On 06.09.2021, this Court declined to entertain the Civil Appeal Nos. 4672-4673 of 2021 and disposed of the same with a direction to the NCLAT to decide the pending Appeals expeditiously.

xxix. On 30.09.2021, the SRA implemented the RP and discharged payment to the creditors. As per

the RP, the SRA - Piramal merged into the CD by way of a scheme of arrangement. Resultantly, the SRA - Piramal ceased to exist with effect from 30.09.2021, and the CD under the name "DHFL" remained as the continuing legal entity.

xxx. On 27.01.2022, the NCLAT passed the common impugned judgment in the Appeals and directed as follows:

> "The term in the RP that permits the SRA to appropriate recoveries, if any, from avoidance applications filed under Section 66 of the Code ought to be set aside. The RP be sent back to the CoC for reconsideration on this aspect."

xxxi. On 14.02.2022, the NCLAT dismissed the Company Appeal No. 539 of 2021 filed by the erstwhile Promoter KW, recording that the RP is under consideration before the CoC and therefore the Appeal had become infructuous.

Hence, the present set of Appeals have been filed.

(III) SUBMISSIONS BY THE LEARNED ADVOCATES FOR THE PARTIES

4. Multidimensional submissions were made at length by all concerned learned Advocates, the crux of which may be narrated below.

(I) Learned Senior Advocates, Mr. Abhishek Manu Singhvi and Mr. Balbir Singh appearing for the SRA - Piramal Capital made elaborate submissions in all the three categories of Appeals. In the First category of Appeals with regard to the impugned order dated 27.01.2022 passed by the NCLAT in Company Appeal Nos.454-455 and 750 of 2021 in relation to treatment of recoveries from Avoidance applications provided under the approved RP, they made the following submissions: -

i. A small group of creditors like the 63 Moons whose cumulative share in the CoC was less than 0.3%, could not have preferred the Appeals before the NCLAT. The respective classes of creditors who voted overwhelmingly in favour of the RP included the said creditors, who were NCD Holders, and therefore they were estopped from challenging the RP.

ii. The decision on the recoveries arising out of Avoidance transactions falls within the commercial wisdom of the CoC and could not have been interfered with by the NCLAT.

iii. The NCLAT in the impugned judgment has entered into the domain of the CoC, in as much as it has

isolated a singular part of a composite and inter-connected RP, and has adjudicated upon the commercial soundness of the CoC's decision to take a higher upfront payment in exchange of giving up the uncertain recoveries of Section 66 applications.

iv. The reliance placed on the decision in ***Tata Steel BSL Limited vs. Venus Recruiter Private Limited and Others*** **(LPA No.37 of 2021)** passed by the single bench of the Delhi High Court was erroneous.

v. The impugned judgment of NCLAT is premised on a misinterpretation of provisions of the IBC and allied Regulations, in as much as Section 67 does not relate to treatment of proceeds from Avoidance applications, instead it deals with a situation where a respondent party in an Avoidance application also happens to be a creditor of the CD.

vi. The NCLAT has erroneously placed reliance on Regulation 37A of IBBI (Liquidation Process) Regulations, 2016 to arrive at a conclusion that the proceeds from the Avoidance applications cannot be shared with the SRA during resolution. In fact, the Regulation 37(a) of the CIRP Regulations

specifically mentions that the resolution plan shall include measures for the transfer of all or part of the assets of the CD.

vii. The NCLAT has incorrectly relied on the foreign jurisprudence and extraneous considerations in impugned judgment.

viii. The notional value of INR 1 to Section 66 Applications was legally sound, for the reason that the notional valuation of Section 66 Applications was done in response to the provisions of RFRP issued by the Administrator.

ix. In the alternative, the NCLAT had failed to appreciate that value of INR 1 was only notional and the true value ascribed to the Section 66 Applications was embedded in the total resolution amount of INR 37,250 Crores proposed under the RP.

x. The impugned judgment amounts to a unilateral modification of RP contrary to the will of the SRA and commercial wisdom exercised by the CoC.

xi. The impugned judgment has far-reaching, and undesirable consequences contrary to the intent of the Legislature.

(II) In the Second category of Appeals filed by the FD Holders/ NCD Holders challenging the impugned order dated 27.01.2022 passed by the NCLAT, Mr. Abhishek Manu Singhvi and Mr. Balbir Singh appearing for the SRA-Piramal Capital made the following submissions: -

i. The Appellants, that is the FD Holders/ NCD Holders, have no *locus standi* to challenge the Resolution Plan by filing the Civil Appeals.

ii. Section 21 (6A) (b) of IBC read with Regulation 16 (A) of the CIRP Regulations, 2016 provides for a mechanism for appointment of an Authorized Representative who could look after the myriad interest of large number of financial creditors in the CoC. In the instant case FD Holders and NCD Holders were represented by the respective representatives, who had demonstrated their objections to the RP before the CoC, and therefore individual member of such group cannot be allowed to raise independent challenge in relation to the CIRP and/ or the RP separately by filing the Appeals.

iii. Section 36 (A) of the NHB Act and Section 45 (QA) of the RBI Act do not mandate full repayment of

deposits. Therefore, the distribution mechanism in the RP could not be said to be illegal or contrary to the provisions of the RBI Act and NHB Act.

iv. The RP is also compliant with Rule 5 (d)(i) of FSP Rules.

v. This Court has repeatedly held that the manner of distribution of proceeds falls within the CoC's commercial wisdom and such commercial wisdom is given paramount status and that the scope of judicial review by the NCLT and NCLAT is very limited. (***K. Sashidhar vs. Indian Overseas Bank and Others,***[1] and ***Maharashtra Seamless Limited vs. Padmanabhan Venkatesh and Others.***[2])

vi. The NHB Act and the IBC are special statutes and the statute enacted later in point of time must prevail.

vii. The FD Holders are estopped from contending that they were not the financial creditors. As per the settled legal position the relationship between a depositor and a Bank is not equivalent to one between a beneficiary and a trustee.

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[1] **(2019) 12 SCC 150**
[2] **(2020) 11 SCC 467**

(III) So far as Third category of Appeals filed by the ex-promoters challenging the impugned order dated 14.02.2022 approving the RP, the order dated 27.01.2022 holding that the ex-promoters did not have the right to attend the CoC meetings or get a copy of Resolution Plan approved by the CoC, the Learned Senior Advocates Mr. Singhvi and Mr. Balbir Singh, defending the said impugned order, made the following submissions: -

i. KW's settlement proposals do not warrant any consideration in these Appeals since they were not accepted by the requisite majority of 89% of CoC. Moreover, an Application under Section 12(A) of IBC for withdrawal of CIRP petition pursuant to a settlement proposal had to be tabled by the RBI, which had refused to do so.

ii. Commercial wisdom of CoC is paramount and ascription of notional value INR 1 is acceptable.

iii. Decisions taken by an overwhelming majority of CoC basing value of CD as determined by the registered valuers, after negotiations with SRA, is not subject to judicial scrutiny. Resolution Plans

cannot be scrutinized from an equitable perception.

iv. The Piramal Capital's RP is binding *inter se* Piramal Capital and CoC, and no modifications are permitted after the approval of the plan by the CoC.

v. Independent recourses such as assignments, settlements, and institution of recovery proceedings in respect of loans, impugned in Avoidance applications are valid because it is Piramal Capital's responsibility to ensure a holistic revival of DHFL and resolution of its distressed assets.

vi. Pendency of Avoidance applications does not bar the CIRP proceedings.

vii. Suspension and Supersession of Board of Directors have distinct legal effects since suspension occurs only due to inability to pay debts while supersession occurs due to fraud and mismanagement.

viii. The Insolvency proceedings of DHFL were conducted in a clear, transparent and time bound manner to preserve and maximize value of the assets for CoC.

ix. The Piramal Capital's RP was accepted by overwhelming majority votes of 93.65% in the CoC, and RBI also has given its NOC for change of control/ ownership/ management basis to the said Resolution Plan on 16.02.2021.

5. The learned Senior Advocates Mr. Tushar Mehta and Mr. Navin Pahwa appearing for the CoC made the following common submissions in all the Appeals:

i. The CoC comprised of **(a)** 26 banks and 12 financial institutions voting 40.60% in the CoC **(b)** NCD Holders (secured and unsecured) 63 Moons class and Roopjyot class voting 53.22% in the CoC **(c)** FD Holders voting 6.18% in the CoC.

ii. Section 32 readwith Section 61(3) contain limited ground to challenge the RP and does not provide any ground to challenge the RP on any of its commercial terms.

iii. Section 45-IE (1) of the RBI Act empowers the RBI to supersede the Board of Directors of the company in the public interest or to prevent the affairs of NBFC being conducted in a manner detrimental to the interest of the depositors or the creditors or for securing proper management of such company. The RBI having been satisfied

superseded the Board of DHFL on 20.11.2019 which was never challenged by the ex-promoters of DHFL.

iv. RBI had filed the Company Petition No. 4258 of 2019 under Section 227 read with Section 239(2)(zk) of the IBC read with Rules 5, 6 of the FSP Rules before the NCLT for initiating CIRP of DHFL, and the said petition was admitted by the NCLAT vide the order dated 03.12.2019, which was also never challenged by the ex-promoters of DHFL.

v. Section 45-IE (4)(a) of the RBI Act states that upon supersession of Board of Directors, the chairman, managing director and other directors shall, from the date of the supersession, vacate their offices. Hence, once the directors vacate their office, they are not a stakeholder of the CD any more and have no locus either to sit in the CoC meetings, demand RP or even challenge the same.

vi. Section 29A(c) of IBC explicitly disqualifies the promoters of the CD from being a RA, subject to certain conditions, and the Board of DHFL having been superseded, the promoters did not have any

right or locus to challenge the RP approved by CoC.

vii. The DHFL had used different enterprise resource planning software application for maintaining fictitious books, loans and verification of financial statement. It was found that the underwriting procedures for loan sanctioning and disbursal were not followed. It was further found that out of sampled 50 entities, 34 entities had invested a portion of amount received from DHFL into the promoter company.

viii. As per the GT's report dated 24.09.2020 on Slum Rehabilitation Authority transaction, it was found that the loans aggregating crores of rupees against the master developers and 14 assignee developers for construction of two SRA projects, were used for investments into the companies linked to the promoters of DHFL.

ix. The Avoidance and Fraudulent transactions as contemplated in IBC were identified by the GT, wherein it was found that the DHFL had made inter-corporate deposits into three entities, which were used for buying the NCDs of Wadhawan Global Corporation, though the said three entities

did not have any income from the business operations.

x. The consortium of lenders had appointed KPMG, a Forensic Auditor, to carry out a special review of DHFL who had prepared the Special Review Audit Report highlighting large number of fraudulent transactions and falsification of books of accounts. Such fraudulent transactions and acts have resulted into number of criminal cases registered against ex-promoters Mr. Kapil Wadhawan and Dheeraj Wadhawan by CBI.

xi. When the ex-promoters of DHFL were found responsible for the fraudulent transactions, which were the subject matter of Section 66 applications, they could not have contended that the subject matter of these applications should be valued at a higher value in the RP, and not INR 1 value for such Avoidance transactions.

xii. The CoC in its commercial wisdom had decided to transfer the speculative part of the assets i.e., Section 66 Fraudulent Trading to the PRAs, thereby eliminating any risk from the said transactions and resulting in an increase in the upfront value of recovery. In any case, the benefit

of avoiding/setting aside any transaction under Section 43, 45, 47, 49 and 50 shall enure to the benefit of DHFL's creditors only.

xiii. The bid process was transparent, competitive and aimed at maximizing the value of assets of the CD.

xiv. The conduct of ex-promoters has been marred by impropriety in as much as several criminal cases relating to cheating, fraud and siphoning of funds have been instituted against them which are pending in the courts of law.

6. The learned Advocate Mr. Santosh Kumar Paul appearing for the Respondent - 63 Moons Technologies Limited, the secured NCD Holders has made the following submissions: -

i. Originally it was envisaged by the Piramal Capital that any recoveries from the transactions avoided/ set aside under Section 43 to 51 and 66 of the IBC would enure to the benefit of DHFL's creditors and that the PRAs will not receive any benefit therefrom. Afterwards, the RFRP was amended on 16.09.2020 to the effect that the recoveries from Section 43, 45, 47, 49 and 50 (and not Section 66) shall enure to the benefit of the creditors, and with

respect to the recoveries from Section 66, the RAs must propose the manner of continuing and dealing with the legal action initiated and propose the manner of treatment of any proceeds arising therefrom. Ultimately, the Piramal Capital was declared as SRA, and it was decided that all recoveries from Avoidance applications filed by the Administrator would benefit the Piramal Capital. The Respondent No. 1 - 63 Moons had objected, such clause being illegal. The NCLAT having considered the said objection decided the said issue in favour of the Respondent - 63 Moons.

ii. As per the settled legal position, the recoveries from Avoidance transactions ought to enure to the benefit of DHFL's creditors only.

iii. As per the judgment of Delhi High Court, in case of ***Venus Recruiters Private Limited vs. Union of India and Others,***[3] the Avoidance applications are meant to give benefit to the creditors of the CD and not to the CD in its new *avatar* after the approval of the RP. The said judgment of Delhi High Court was not disturbed upon Appeal before the Division

[3] **2020 SCC OnLine Del 1479**

Bench of the High Court, and the SLP against the said decision is pending before this Court.

iv. A mandatory statutory duty has been cast upon the Tribunal in terms of Section 31 read with Section 30(2) of the IBC to ensure that a RP which is placed before it for approval has complied with the relevant provisions of law.

v. The Respondent - 63 Moons had voted owing to express liberty granted by the NCLT, without prejudice to the respondent's rights and contentions, hence the plea of estoppel was not available to the Appellant - Piramal. As per the position of law settled by this Court in ***M.K. Rajagopalan vs. Dr. Periasamy Palani Gounder and Another,***[4] the commercial wisdom of CoC means a considered decision taken by CoC with reference to the commercial interest and interest of revival of CD and maximization of value of its assets.

7. The Learned Senior Advocate Mr. Dhruv Mehta appearing for the Appellants - the FD Holders of CD, who have challenged the impugned order dated

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[4] **2024 (1) SCC 42**

07.02.2022 passed by the NCLAT in Company Appeal No. 538 of 2021 made the following submissions: -

i. The NCLAT had erred in passing the impugned order, not appreciating that in terms of Section 30(2)(e) read with Sections 31(3)(i) of the Code, the RP ought to have been struck down as being in contravention of the provisions of the NHB Act and RBI Act, which provide for security of deposits made by the FD Holders.

ii. An unjustified resort to Section 238 of the Code has the effect of rendering the provisions contained in Section 30(2)(e) of the Code nugatory.

iii. Section 36(A) of NHB Act makes it clear that the deposits have to be repaid strictly in accordance with the terms of such deposits. Section 36 of NHB Act provides that the provisions thereof shall have the effect notwithstanding anything inconsistent contained in any other law for the time being in force.

iv. Unlike a regular CD, a FSP stands on a different footing and should entail greater scrutiny in examining its compliance with the applicable laws for the time being in force. The commercial wisdom of CoC cannot stretch to cover regulatory aspects

specifically provided for under the NHB Act read with its directions.

8. The Learned Senior Advocate Mr. Maninder Singh appearing for the Appellant Uttar Pradesh State Power Sector Employees Trust in C.A. No. 2396 of 2022 made the following submissions: -

i. The monies invested by the FD Holders were held in Trust by DHFL.

ii. Rule 10 of the FSP Rules provides that Rule 5(b)(Moratorium) of the FSP Rules and Section 14 of the Code do not apply to any third-party assets or properties in custody or possession of the FSP, including any funds, securities and other assets required to be held in Trust for the benefit of third parties. The Explanation to Section 18 of the Code also provides that assets owned by third-party in possession of the CD, held under Trust or under contractual arrangements including bailment, could not be assets for the purpose of Section 18. In this regard, reliance has been placed on the observations made ***in Embassy Property Developments Private Limited vs. State of Karnataka and Others.***[5]

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[5] **(2020) 13 SCC 308**

iii. As held by the various High Courts, the monies deposited by the FD Holders are not in the nature of a loan but in fact a deposit to be held in Trust by the Company till the time of maturity. Therefore, the monies deposited by the FD Holders were not the monies of DHFL but in fact were the monies deposited in Trust, thereby making DHFL liable to repay such deposits in full.

iv. The NCLT and NCLAT had failed to consider that the repayment obligations of DHFL, which was a deposit receiving Housing Finance Institution, engaged in the business of providing Financial Services in terms of the license granted by NHB and RBI. Hence, the FD Holders ought to have been paid as per the terms of their deposits, in full, in view of the statutory obligation of DHFL.

v. In absence of any contradictions between the Code and the NHB Act, the overriding effect contained in Section 238 of the Code does not apply.

vi. Public Depositors are neither secured creditors nor unsecured creditors but constitute a third class of creditors who stand on a higher footing than secured/unsecured creditors with a statutory right

to the repayment. Hence, the claim of the public deposit holders ought not to be equated with that of any other creditor of DHFL and ought to be repaid in full as statutorily mandated.

9. The learned Senior Advocate Mr. Nakul Diwan appearing for the Respondent Nos. 4 to 7 in C.A. Nos. 1632-1634 of 2022 and C.A. Nos. 2989-2991 of 2022 has made following submissions, supporting the judgment and order dated 27.01.2022 passed by the NCLAT:

i. Although the SRA - Piramal Capital has enhanced its offer in the RP, such enhancement was not against consideration of the recoveries to be made from the Avoidance transactions. Even otherwise the value ascribed by the SRA to the Avoidance applications was merely valued at a nominal price of INR 1 and such enhancement cannot be said to be in consideration of the recoveries to be made under the Avoidance transaction, which were valued at INR 45,000 Crores alone.

ii. The Respondents had abstained from voting in favour of RP, as Clause 2.13.3 was an illegal provision contrary to the IBC. On careful appreciation of the provisions of IBC, the NCLAT

vide its judgment dated 27.01.2022 rightly set aside Clause 2.13.3 and directed the CoC to reconsider the same.

iii. In ***K. Sashidhar vs. Indian Overseas Bank and Others*** (supra)***,*** and in ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Others,***[6] it is held that there is a scope of judicial scrutiny in RP if it is not in accordance with Section 30(2) read with Section 31(I) of the IBC.

10. The Learned Senior Advocate Mr. Kapil Sibal, appearing for the ex-promoters Kapil Wadhawan and Dheeraj Wadhawan made the following submissions: -

i. Any recoveries from the Avoidance applications ought to be for the benefit of creditors, having regard to the object and purpose and legal history of the IBC.

ii. Piramal Capital cannot be permitted to retain recoveries past/future from the Avoidance applications, which otherwise should be only for the benefit of the creditors.

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[6] **2020 (8) SCC 531**

iii. Section 25 of the IBC sets out the duties of the Resolution Professional. One of the duties is to preserve and protect the assets of the CD and to file Avoidance applications for the benefit of the CD.

iv. The Avoidance applications are filed in respect of Sections 43, 44, 45, 46, 50 and 51, falling within Chapter III. The provisions pertaining to the Fraudulent trading or Wrongful trading fall under Section 66 contained in Chapter VI. Considering the scheme of the Code, as also the object and purpose of the Code, it is clearly demonstrated that the benefit of the Avoidance applications is intended for the benefit of the CD, for which the responsibility has been cast upon the Resolution Professional.

v. The provision of Piramal's RP which permits benefits of Avoidance applications under Section 66 of the Code to be retained by the Piramal Capital is contrary to law. In the alternative, it is submitted that as an exception the benefit of Avoidance applications can be assigned to the third parties, (in the present case Piramal), however, it was the duty of the Resolution

Professional to ensure that the assignment was done for proper consideration, and in the instant case, the assignment of Avoidance transactions was not shown to be for proper consideration.

vi. The fulcrum on which the Resolution Process under the Code proceeds is the full and correct knowledge of the affairs of the CD, however, in the instant case, the creditors had no knowledge of the value of the securities/properties which formed the basis of Avoidance transactions under Section 66 of the Code. Therefore, the CoC could not be said to have exercised its commercial wisdom while approving the RP of the Piramal Capital.

vii. The Administrator also sought to exclude the ex-promotors on a specious plea that they were superseded, despite the fact that the ex-promoters through several letters had made efforts to inform Administrator and CoC, the significant value of business and assets of DHFL in the interest of the creditors.

viii. Assuming, without admitting, that CoC had all the relevant information, the CoC had miserably failed to demonstrate the rationale behind the recoveries from Avoidance transactions under

Section 66 of the IBC Code being ascribed NIL value and assigning the same to Piramal at Rupee 1.

ix. The Piramal Capital's subsequent conduct demonstrated that there was value locked up in the Avoidance transactions and despite such value the benefit of the same was not factored in the bid amount.

x. The CoC's justification for the Piramal's valuation of Avoidance transactions for Rupee 1 was contrary to the records and unjustified.

xi. The amount under Section 43 and 45 of the Code are a small portion of the total amount impugned in the Avoidance applications. There is no difference in the potentiality of recovery from transactions impugned under Section 66 or Section 45 in the present case. The nature of trading in respect of Section 66 applications is not fictitious. The actions of Piramal in filing Section 7 applications makes it evident that the classification of entire transactions as fraudulent by the Administrator was incorrect.

xii. The ex-promoters/KW and DW were entitled to participate in the CoC, to have access to all

records and documents as well as the copy of the RP.

xiii. The provisions of the IBC would prevail over the RBI Act in view of the *non-obstante* clause in Section 238 of the Code. Thus, the rights of the Director under the Code remain unaffected by the effect of supersession under the RBI Act.

xiv. The IBC was made applicable to the Financial Service Providers such as the DHFL under the FSP Rules.

xv. There was no modification as provided under Rule 5 of the FSP Rules, which could affect the ex-promoter/Director's right of participation.

xvi. Piramal Capital cannot be permitted to unjustly enrich itself at the cost of the creditors by retaining the benefit for which it has not paid any value.

xvii. The objective of the IBC for value maximization has not been taken into consideration under the shield of commercial wisdom of CoC.

xviii. Lastly, no fair and transparent procedure, in the nature of auction/ assignment of the underlying assets for the part of Avoidance transactions, was undertaken to enable the realization of full value of

the underlying assets and ensure maximization of value in the interest of the creditors of DHFL.

(IV) RELEVANT PROVISIONS OF THE IBC AND OTHER ACTS

11. Before adverting to the rival submissions made by the learned counsels for the parties, let us have a glance through the provisions contained in the IBC and other Acts & Rules relevant for the purpose of deciding these Appeals.

12. As the long title of IBC suggests, IBC has been enacted to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto. The objective behind enacting the IBC is to provide an effective legal framework for timely resolution of Insolvency and Bankruptcy, which

would support the development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development. The provisions of the IBC had come into force on different dates as notified by the Central Government by Notification in the Official Gazette from time to time.

13. Chapter II pertains to the Corporate Insolvency Resolution Process. Section 7 thereof pertains to the Initiation of Corporate Insolvency Resolution Process by Financial Creditor and Section 8 thereof pertains to the Insolvency Resolution by Operational Creditor. Section 16 provides for appointment and tenure of Interim Resolution Professional and Section 18 thereof enumerates the duties of the Interim Resolution Professional appointed by the Adjudicating Authority, on the commencement of insolvency proceedings. Section 21 empowers the Interim Resolution Professional to constitute a Committee of Creditors (CoC), after collation of all claims received against the CD and determination of financial position of the CD. The CoC is comprised of

all Financial Creditors of the CD, subject to the provisions of Section 21.

14. Section 22 pertains to the Appointment of Resolution Professional who is to be appointed by the CoC within 7 days of the constitution of the CoC. The duties of Resolution Professional are enumerated in Section 25. As per clause (j) of sub-section (2) of Section 25, the Resolution Professional has to file an application for avoidance of transactions in accordance with Chapter III, if any. Section 26 states that the filing of an Avoidance application under clause (j) of sub-section (2) of Section 25 by the Resolution Professional shall not affect the proceedings of CIRP.

15. Section 29 requires the Resolution Professional to prepare an information memorandum containing relevant information as may be specified by the Insolvency and Bankruptcy Board of India. An eligible RA can submit a RP on the basis of the information memorandum prepared by the Resolution Professional, as per Section 30. The Resolution Professional after examining each RP received by him and after confirming that the same are in consonance with sub-section (2) of Section 30, would

present the same to the CoC for its approval. The relevant part of Section 30 is quoted below.

> "**30. Submission of Resolution Plan –**
>
> (1) ……..
>
> (2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan--
>
> > (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;
> >
> > (b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than--
> >
> > > (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
> > >
> > > (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.--For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.-- For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor--

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

Explanation.-- For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law];

(3)…….

(4) The committee of creditors may approve a resolution plan by a vote of not less than "sixty-six" per cent of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board:
Provided ……..
(5) & (6) ……"

Sub-section (6) of Section 30 requires the Resolution Professional to submit the RP as approved by the CoC to the Adjudicating Authority.

16. Section 31 being important for the purpose of these appeals, the relevant part thereof is reproduced hereunder: -

"**31. Approval of Resolution Plan** –

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by

order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.
Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.
(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.
(3) & (4) ……..”

17. Section 32 pertains to the Appeal to be filed from an order approving the RP in the manner and on the grounds laid down in sub-section (3) of Section 61.

18. The jurisdiction of the Adjudicating Authority (NCLT) for corporate persons is circumscribed in sub-section (5) of Section 60, which reads as under:

> **“60. Adjudicating authority for corporate persons:**
>
> (1) to (4)…….
> (5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of— (a) any application or proceeding by or against the

corporate debtor or corporate person; (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.
(6)……..”

19. Section 61 provides for the Appeals and Appellate Authority. The relevant part thereof is reproduced as under:

“**61. Appeals and Appellate Authority. –**

(1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.
(2) ……
(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:
(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;
(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;
(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or
(v) the resolution plan does not comply with any other criteria specified by the Board.
(4) & (5) ……."

20. So far as Avoidance applications under Chapter-III are concerned, Section 43 pertains to the Application to be filed in respect of the Preferential transactions and the relevant time therefor, and Section 44 pertains to the orders that may be passed by the Adjudicating Authority in such application filed under Section 43(1). Section 45 pertains to the Application to be filed for the avoidance of Undervalued transactions, and Section 46 pertains to the relevant period for avoidable transactions. Section 47 pertains to the Application that may be filed by Creditor in cases of Undervalued transactions, and the orders to be passed by the Adjudicating Authority in such Application. Section 48 pertains to the orders that may be passed by the Adjudicating Authority in cases of Undervalued transactions contemplated under sub-section (1) of Section 45, and Section 49 pertains to the orders that may be passed by the Adjudicating Authority on being satisfied that CD has entered into an Undervalued transaction as referred to in sub-

section (2) of Section 45. Section 50 pertains to the Application to be filed in respect of Extortionate Credit transactions and Section 51 pertains to the orders that may be passed by the Adjudicating Authority in the Application made under Section 50(1) of IBC.

21. Section 66 pertaining to the "Fraudulent trading or Wrongful trading" being relevant for the purpose of the present Appeals, the same is reproduced hereunder: -

> "**66. Fraudulent trading or wrongful trading. –**
>
> 1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.
> (2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if—
>
> (a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the

commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution profession under sub-Section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per Section 10A.

Explanation. — For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor."

22. Section 67 deals with the proceedings under Section 66. It reads as under: -

"**67. Proceedings under Section 66. –**

(1) Where the Adjudicating Authority has passed an order under sub-section (1) or sub-section (2) of section 66, as the case may be, it may give such further directions as it may deem appropriate for giving effect to the order, and in particular, the Adjudicating Authority may—

(a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the corporate debtor to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the corporate debtor held by or vested in him, or any person on his behalf, or any person claiming as

assignee from or through the person liable or any person acting on his behalf; and
(b) from time to time, make such further directions as may be necessary for enforcing any charge imposed under this section.
Explanation. —For the purposes of this section, "assignee" includes a person to whom or in whose favour, by the directions of the person held liable under clause (a) the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration given in good faith and without notice of any of the grounds on which the directions have been made.
(2) Where the Adjudicating Authority has passed an order under sub-section (1) or sub-section (2) of section 66, as the case may be, in relation to a person who is a creditor of the corporate debtor, it may, by an order, direct that the whole or any part of any debt owed by the corporate debtor to that person and any interest thereon shall rank in the order of priority of payment under section 53 after all other debts owed by the corporate debtor."

23. Section 238 states that the provisions of IBC shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument, having effect by virtue of any such law.

24. The Insolvency and Bankruptcy Board of India (IBBI), in exercise of the powers conferred under Section 240 of IBC, has framed the Regulations called "The Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Persons) Regulations, 2016 (for short, Regulations, 2016) laying down a detailed procedure required to be followed for the Insolvency Resolution Process for Corporate Persons. Regulation 37 of the said Regulations requires the RP to provide for the measures, as may be necessary, for Insolvency Resolution of the CD for maximization of value of its assets. Regulation 38 states about the mandatory contents of the RP. Regulation 39 states about the procedure to be followed while approving the Plan, also prescribing time limit for each stage of the process. The relevant part of Regulation 39 is reproduced as under:

> "**Regulation 39- Approval of Resolution plan –**
>
> **(1)** ……..
> **(2)** The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him: -
> (a) preferential transactions under section 43;
> (b) undervalued transactions under section 45;
> (c) extortionate credit transactions under section 50; and
> (d) fraudulent transactions under section 66,
> and the orders, if any, of the adjudicating authority in respect of such transactions.
> **(3)** The committee shall-

(a) evaluate the resolution plans received under sub-regulation (2) as per evaluation matrix;
(b) record its deliberations on the feasibility and viability of each resolution plan; and
(c) vote on all such resolution plans simultaneously.
(3A) Where only one resolution plan is put to vote, it shall be considered approved if it receives requisite votes.
(3B) …….
(4) The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in Form H of the Schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B.
(5) to (8) …….
(9) A creditor, who is aggrieved by non-implementation of a resolution plan approved under sub-section (1) of section 31, may apply to the Adjudicating Authority for directions."

25. The IBBI has also framed the Regulations called the IBBI (Liquidation Process) Regulations, 2016. Since, the NCLAT has referred to Regulation 37A thereof, the same is reproduced as under:

"**Regulation 37A – Assignment of not readily realizable assets.** –

1) A liquidator may assign or transfer a not readily realisable asset through a transparent process, in consultation with the stakeholders' consultation committee in accordance with regulation 31A, for a consideration to any

person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.

Explanation. - For the purposes of this sub-regulation, "not readily realisable asset" means any asset included in the liquidation estate which could not be sold through available options and includes contingent or disputed assets and assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in sections 43 to 51 and section 66 of the Code."

26. The Reserve Bank of India Act, 1934 (RBI Act) was enacted to regulate the issue of Bank Notes and for keeping reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage. The RBI is also responsible to operate the monetary policy framework in India. The relevant part of the provisions contained in Section 45-IE of RBI Act, under which the RBI had superseded the Board of Directors of DHFL and appointed the Administrator, is reproduced as under: -

"45-IE. Supersession of Board of directors of non-banking financial company (other than Government Company). —

(1) Where the Bank is satisfied that in the public interest or to prevent the affairs of a non-banking financial company being conducted in a manner detrimental to the interest of the depositors or

creditors, or of the non-banking financial company (other than Government Company), or for securing the proper management of such company or for financial stability, it is necessary so to do, the Bank may, for reasons to be recorded in writing, by order, supersede the Board of Directors of such company for a period not exceeding five years as may be specified in the order, which may be extended from time to time, so, however, that the total period shall not exceed five years.

(2) The Bank may, on supersession of the Board of Directors of the non-banking financial company under sub-section (1), appoint a suitable person as the Administrator for such period as it may determine.

(3) to (9)……..”

27. Section 45 (QA) of RBI Act having been relied upon, the same is reproduced as under:

“45QA. Power of Company Law Board to order repayment of deposit. —

(1) Every deposit accepted by a non-banking financial company, unless renewed, shall be repaid in accordance with the terms and condition of such deposit.
(2) Where a non-banking financial company has failed to repay and deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board constituted under section 10E of the Companies Act, 1956 (1 of 1956), may, if it is satisfied, either on its own motion or on an application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest, direct, by order, the non-banking financial company to make repayment of such deposit or part thereof

forthwith or within such time and subject to such conditions as may be specified in the order:
Provided that the Company Law Board may, before making any order under this sub-section, give a reasonable opportunity of being heard to the non-banking financial company and the other persons interested in the matter."

28. The NHB Act has been enacted to establish a Bank to be known as the National Housing Bank to operate as a principal agency to promote housing finance institutions, both at local and regional levels and to provide financial and other support to such institutions and for matters connected therewith or incidental thereto. Section 36(A) of NHB Act having been relied upon, the same is also reproduced for ready reference:

"36A. Power to order repayment of deposit. —

(1) Every deposit accepted by a housing finance institution which is a company unless renewed, shall be repaid in accordance with the terms and conditions of such deposit.

(2) Where a housing finance institution which is a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, such officer of the National Housing Bank, as may be authorised by the Central Government for the purpose of this section (hereinafter referred to as the "authorised officer") may, if he is satisfied, either on his own motion or on any application of the depositor, that it is necessary so to do to

> safeguard the interests of the housing finance institution, the depositors or in the public interest, direct, by order, such housing finance institution to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:
>
> Provided that the authorised officer may, before making any order under this sub-section, give a reasonable opportunity of being heard to the housing finance institution and the other persons interested in the matter."

(V) SCOPE OF JUDICIAL REVIEW: -

29. Before adverting to the issues involved in these Appeals, let us examine the scope of judicial review by the NCLT under Section 31 and the scope of judicial review by NCLAT under Section 61 of IBC.

30. From the bare perusal of the Statement of Objects and Reasons, it is discernible that one of the prime objects of IBC is to provide for implementation of the Insolvency Resolution Process in a time bound manner for maximization of value of assets in order to balance the interests of the stakeholders. The Legislature in order to fill up critical gaps in the corporate insolvency framework, had made amendments in certain provisions by Act of 26 of 2019, making the RP approved by the Adjudicating

Authority binding on the Central Government, any State Government or local authority to whom a debt is owned in respect of payment of dues arising under any law for the time being in force.

31. If one glances through the scheme of the IBC, its purpose is also explicitly spelt out from the various provisions of the Act itself. The role and importance of the CoC have been stated in Section 21, the duties of the Resolution Professional in Section 25, the approval of RP by the Adjudicating Authority in Section 31. Certain mandates have been given in Section 31 for the effective implementation of the RP, as approved by the CoC. The said requirements are **(i)** the RP must be approved by the CoC by a vote of not less than 66% of voting share of the financial creditors, as contemplated in sub-section (4) of Section 30. **(ii)** the RP submitted by the Resolution Professional must confirm the requirements of sub-section (2) of Section 30. The mandatory contents of the RP have also been stated in Regulation 38 of the Regulations, 2016. Thus, having regard to Section 31, it is clear that the Adjudicating Authority i.e. NCLT, if it is satisfied that the RP as approved by the CoC under sub-section (4) of Section 30 meets the requirements

as referred to in sub-section (2) of Section 30, it shall by an order approve the RP, which shall be binding on all the stakeholders. The Adjudicating Authority can reject the RP under sub-section (2) of Section 31, where it is satisfied that the RP does not confirm to the requirements referred to in sub-section (1) thereof.

32. At this juncture, it is also necessary to refer to Section 61 which deals with the grounds on which Appeals could be preferred before the Appellate Authority i.e. NCLAT against the order approving the RP under Section 31 by the NCLT. As per sub-section (3) of Section 61, an appeal against an order of approving the RP under Section 31 could be filed on one of the five grounds mentioned therein. One of the grounds on which an Appeal could be filed is, when the approval of RP by the NCLT is in contravention of the provisions of any law for the time being in force. Another ground is, when there has been material irregularity in exercise of the powers by the Resolution Professional during the Corporate Insolvency Resolution period. There are other three grounds with which we are not concerned in the present set of Appeals. Suffice it to say that there are specific

grounds mentioned in the sub-section (3) for preferring of an Appeal before the NCLAT under Section 61 of the Code. Thus, the powers to be exercised by the NCLAT under Section 61, have also been specifically confined to the grounds mentioned therein.

33. The reasons for circumscribing the powers of NCLT under Section 31 in approving/rejecting the RP approved by the CoC and of the NCLAT under Section 61 in entertaining the Appeals arising out of the orders passed by the NCLT approving the RP on limited grounds are not far to be culled out. The very prominent purpose of the IBC has been spelt out in the long title of the Act itself, which is to promote entrepreneurship, availability of credit and balance the interest of all the stakeholders in the CIRP proceedings in a time bound manner. This Court in catena of decisions has dealt with the dominant purpose and objectives of enacting the IBC, while examining the scope of judicial review by the NCLT and the NCLAT over the commercial wisdom exercised by the CoC.

34. In ***Arcelormittal India Private Limited vs. Satish Kumar Gupta and Others,***[7] this Court had elaborately adverted to the legislative history and delineated the broad contours of the provisions of the IBC, from which it could be seen that the commercial wisdom of CoC has been given prominent status without any judicial intervention, for ensuring the completion of Resolution Process within the timelines prescribed by the IBC. It is also required to be noted that there is a mandate of completing the Resolution Process within 270 days (outer limit), failing which an initiation of Liquidation process has been made inevitable. This Court in the said judgment after discussing the scheme of the Act, and also the earlier judgments, emphasized on the prescription of time-limit for the completion of Insolvency process. Paragraph 75 of the said judgment being relevant is reproduced hereunder: -

> **"75.** In fact, even the literal language of Section 12(1) makes it clear that the provision must read as being mandatory. The expression "*shall* be completed" is used. Further, sub-section (3) makes it clear that the duration of 180 days may be extended further "but not exceeding 90 days", making it clear that a maximum of 270 days is laid down statutorily. Also, the proviso to

[7] **(2019) 2 SCC 1**

Section 12 makes it clear that the extension "shall not be granted more than once."

35. In ***K. Sashidhar vs. Indian Overseas Bank and Others*** (supra), this Court dealt with the discretion of the Adjudicating Authority (NCLT) and the jurisdiction of the NCLAT as an Appellate Authority and held as under: -

> **"55.** Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (*i*) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (*ii*) the repayment of the debts of operational creditors in prescribed manner, (*iii*) the management of the affairs of the corporate debtor, (*iv*) the implementation and supervision of the resolution plan, (*v*) does not contravene any of the provisions of the law for the time being in force, (*vi*) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial

creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

56. .....

57. On a bare reading of the provisions of the I&B Code, it would appear that the remedy of appeal under Section 61(1) is against an "order passed by the adjudicating authority (NCLT)", which we will assume may also pertain to recording of the fact that the proposed resolution plan has been rejected or not approved by a vote of not less than 75% of voting share of the financial creditors. Indubitably, the remedy of appeal including the width of jurisdiction of the appellate authority and the grounds of appeal, is a creature of statute. The provisions investing jurisdiction and authority in NCLT or Nclat as noticed earlier, have not made the commercial decision exercised by CoC of not approving the resolution plan or rejecting the same, justiciable. This position is reinforced from the limited grounds specified for instituting an appeal that too against an order "approving a resolution plan" under Section 31. First, that the approved

resolution plan is in contravention of the provisions of any law for the time being in force. Second, there has been material irregularity in exercise of powers "by the resolution professional" during the corporate insolvency resolution period. Third, the debts owed to operational creditors have not been provided for in the resolution plan in the prescribed manner. Fourth, the insolvency resolution plan costs have not been provided for repayment in priority to all other debts. Fifth, the resolution plan does not comply with any other criteria specified by the Board. Significantly, the matters or grounds—be it under Section 30(2) or under Section 61(3) of the I&B Code—are regarding testing the validity of the "approved" resolution plan by CoC; and not for approving the resolution plan which has been disapproved or deemed to have been rejected by CoC in exercise of its business decision.

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (Nclat) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. **Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers."**

36. In ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Others*** (supra), a Three-Judge Bench discussed in detail the issues pertaining to the role of Resolution Professionals, CoCs, and the jurisdiction of NCLT and NCLAT and observed as under: -

> "**64.** Thus, what is left to the majority decision of the Committee of Creditors is the "feasibility and viability" of a resolution plan, which obviously takes into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors. As an example, take the case of a resolution plan which does not provide for payment of electricity dues. It is certainly open to the Committee of Creditors to suggest a modification to the prospective resolution applicant to the effect that such dues ought to be paid in full, so that the carrying on of the business of the corporate debtor does not become impossible for want of a most basic and essential element for the carrying on of such business, namely, electricity. This may, in turn, be accepted by the resolution applicant with a consequent modification as to distribution of funds, payment being provided to a certain type of operational creditor, namely, the electricity distribution company, out of upfront payment offered by the proposed resolution applicant which may also result in a consequent reduction of amounts payable to other financial and operational creditors. What is important is that it is the commercial wisdom of this majority of creditors which is to determine, through negotiation with the prospective resolution applicant, as to how and in what manner the corporate resolution process is to take place."

37. On the issue of jurisdiction of the Adjudicating Authority i.e. NCLT and the Appellate Tribunal i.e. NCLAT, it was held in ***Essar Steel*** (supra) as under:-

> ***"Jurisdiction of the Adjudicating Authority and the Appellate Tribunal***
>
> **65.** As has already been seen hereinabove, it is the Adjudicating Authority which first admits an application by a financial or operational creditor, or by the corporate debtor itself under Sections 7, 9 and 10 of the Code. Once this is done, within the parameters fixed by the Code, and as expounded upon by our judgments in *Innoventive Industries Ltd.* v. *Icici Bank* [*Innoventive Industries Ltd.* v. *Icici Bank*, (2018) 1 SCC 407 : (2018) 1 SCC (Civ) 356] and *Macquarie Bank Ltd.* v. *Shilpi Cable Technologies Ltd.* [*Macquarie Bank Ltd.* v. *Shilpi Cable Technologies Ltd.*, (2018) 2 SCC 674 : (2018) 2 SCC (Civ) 288] , the Adjudicating Authority then appoints an interim resolution professional who takes administrative decisions as to the day to day running of the corporate debtor; collation of claims and their admissions; and the calling for resolution plans in the manner stated above. After a resolution plan is approved by the requisite majority of the Committee of Creditors, the aforesaid plan must then pass muster of the Adjudicating Authority under Section 31(1) of the Code. The Adjudicating Authority's jurisdiction is circumscribed by Section 30(2) of the Code. In this context, the decision of this Court in *K. Sashidhar* [*K. Sashidhar* v. *Indian Overseas Bank*, (2019) 12 SCC 150: (2019) 4 SCC (Civ) 222] is of great relevance.
>
> **66**. .....

67. …..Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in *K. Sashidhar*.

68. …….

69. It will be noticed that the non obstante clause of Section 60(5) speaks of *any other law* for the time being in force, which obviously cannot include the provisions of the Code itself. Secondly, Section 60(5)(*c*) is in the nature of a residuary jurisdiction vested in NCLT so that NCLT may decide all questions of law or fact arising out of or in relation to insolvency resolution or liquidation under the Code. Such residual jurisdiction does not in any manner impact Section 30(2) of the Code which circumscribes the jurisdiction of the Adjudicating Authority when it comes to the confirmation of a resolution plan, as has been mandated by Section 31(1) of the Code. A harmonious reading, therefore, of Section 31(1) and Section 60(5) of the Code would lead to the result that the residual jurisdiction of NCLT under Section 60(5)(*c*) cannot, in any manner, whittle down Section 31(1) of the Code, by the investment of some discretionary or equity jurisdiction in the Adjudicating Authority outside Section 30(2) of the Code, when it comes to a resolution plan being adjudicated upon by the Adjudicating Authority. This argument also must needs be rejected."

38. The Court also considered the amendment to Section 30(4) i.e. fourth proviso which was added to sub-section (4) which came into force from 23.11.2017, and observed as under: -

> **"68.** Suffice it to observe that the amended provision merely restates as to what the financial creditors are expected to bear in mind whilst expressing their choice during consideration of the proposal for approval of a resolution plan. No more and no less. Indubitably, the legislature has consciously not provided for a ground to challenge the justness of the "commercial decision" expressed by the financial creditors—be it to approve or reject the resolution plan. The opinion so expressed by voting is non-justiciable. Further, in the present cases, there is nothing to indicate as to which other requirements specified by the Board at the relevant time have not been fulfilled by the dissenting financial creditors. As noted earlier, the Board established under Section 188 of the I&B Code can perform powers and functions specified in Section 196 of the I&B Code. That does not empower the Board to specify requirements for exercising commercial decisions by the financial creditors in the matters of approval of the resolution plan or liquidation process. Viewed thus, the amendment under consideration does not take the matter any further."

39. Again, a Three-Judge bench in ***Ghanashyam Mishra and Sons Private Limited through the Authorised Signatory vs. Edelweiss Asset Reconstruction Company Limited through the***

Director and Others,[8] examined the legislative intent of making the RP binding on all the Stakeholders after it gets seal of approval from the Adjudicating Authority, and observed as under: -

> **"64.** It could thus be seen, that the legislature has given paramount importance to the commercial wisdom of CoC and the scope of judicial review by adjudicating authority is limited to the extent provided under Section 31 of the I&B Code and of the appellate authority is limited to the extent provided under sub-section (3) of Section 61 of the I&B Code, is no more res integra.
>
> **65.** Bare reading of Section 31 of the I&B Code would also make it abundantly clear that once the resolution plan is approved by the adjudicating authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in sub-section (2) of Section 30, it shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code is revival of the corporate debtor and to make it a running concern."

40. Recently, this Court in ***Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited and Another,***[9] reiterating that the Adjudicating Authority is prohibited from second-

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[8] (2021) 9 SCC 657
[9] (2022) 2 SCC 401

guessing the commercial wisdom of the parties or directing unilateral modification to the RPs, as held in ***Essar Steel*** (supra) and ***K. Sashidhar*** (supra), further held as under-

> **"157.** These are binding precedents. Absent a clear legislative provision, this Court will not, by a process of interpretation, confer on the adjudicating authority a power to direct an unwilling CoC to renegotiate a submitted resolution plan or agree to its withdrawal, at the behest of the resolution applicant. The adjudicating authority can only direct the CoC to re-consider certain elements of the resolution plan to ensure compliance under Section 30(2) IBC, before exercising its powers of approval or rejection, as the case may be, under Section 31 [*Essar Steel (India) Ltd. (CoC)* v. *Satish Kumar Gupta*, (2020) 8 SCC 531, para 73 : (2021) 2 SCC (Civ) 443] . In *State of A.P.* v. *P. Laxmi Devi* [*State of A.P.* v. *P. Laxmi Devi*, (2008) 4 SCC 720], while determining the constitutionality of a statute, this Court observed that it should be wary of transgressing into the domain of the legislature, especially in matters relating to economic and regulatory legislation. This Court observed : (*P. Laxmi Devi case* [*State of A.P.* v. *P. Laxmi Devi*, (2008) 4 SCC 720]
>
> > "*80*. … As regards economic and other regulatory legislation judicial restraint must be observed by the court and greater latitude must be given to the legislature while adjudging the constitutionality of the statute because the court does not consist of economic or administrative experts. *It has no expertise in these matters, and in this age of specialisation when*

policies have to be laid down with great care after consulting the specialists in the field, it will be wholly unwise for the court to encroach into the domain of the executive or legislative (sic legislature) and try to enforce its own views and perceptions."

158. Judicial restraint must not only be exercised while adjudicating upon the constitutionality of the statute relating to economic policy but also in matters of interpretation of economic statutes, where the interpretative manoeuvres of the Court have an effect of transgressing into the law-making power of the legislature and disturbing the delicate balance of separation of powers between the legislature and the judiciary. Judicial restraint must be exercised in such cases as a matter of prudence, since the court neither has the necessary expertise nor the power to hold consultations with stakeholders or experts to decide the direction of economic policy. A court may be inept in laying down a detailed procedure for exercise of the power of withdrawal or modification by a successful resolution applicant without impacting the other procedural steps and the timelines under IBC which are sacrosanct. Thus, judicial restraint must be exercised while intervening in a law governing substantive outcomes through procedure, such as IBC. In this case, if resolution applicants are permitted to seek modifications after subsequent negotiations or a withdrawal after a submission of a resolution plan to the adjudicating authority as a matter of law, it would dictate the commercial wisdom and bargaining strategies of all prospective resolution applicants who are seeking to participate in the process and the successful resolution applicants who may wish to negotiate

a better deal, owing to myriad factors that are peculiar to their own case. The broader legitimacy of this course of action can be decided by the legislature alone, since any other course of action would result in a flurry of litigation which would cause the delay that IBC seeks to disavow."

41. What is "commercial wisdom" of CoC has been very aptly put by this Court in a latest decision in ***M.K. Rajagopalan vs***. ***Dr. Periasamy Palani Gounder and Another*** (supra), which is worth reproducing: -

> **"160.** As noticed hereinbefore, commercial wisdom of CoC is given such a status of primacy that the same is considered rather a matter non-justiciable in any adjudicatory process, be it by the adjudicating authority or even by this Court. However, the commercial wisdom of CoC means a considered decision taken by CoC with reference to the commercial interests and the interest of revival of the corporate debtor and maximisation of value of its assets. This wisdom is not a matter of rhetoric but is denoting a well-considered decision by the protagonist of CIRP i.e. CoC. As observed by this Court in *K. Sashidhar* [*K. Sashidhar* v. *Indian Overseas Bank*, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] , the financial creditors forming CoC "*act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision*." This Court also observed in *K. Sashidhar* [*K. Sashidhar* v. *Indian Overseas Bank*, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] that "*[t]here is an intrinsic assumption that*

financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan."

161. These observations read with the observations in *Essar Steel* [*Essar Steel India Ltd. (CoC)* v. *Satish Kumar Gupta*, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] with reference to the reasons stated in the Report of Bankruptcy Law Reforms Committee of November 2015, make it clear that commercial wisdom of CoC is assigned primacy in CIRP for it represents collective business decision, which is arrived at after thorough examination of the proposed resolution plan and assessment made with involvement of experts by the body of persons who are most vitally interested in rapid and efficient decision making. It follows as a necessary corollary that to be worth its name, the commercial wisdom of CoC would come into existence and operation only when all the relevant information is available before it and is duly deliberated upon by all its members, who have direct and substantial interest in the survival of corporate debtor and in the entire CIRP.

162. In light of the aforesaid position of law and its operation in relation to the decision-making process of CoC, it needs hardly any emphasis that each and every aspect relating to the resolution plan, and more particularly its financial layout, has to be before the CoC before it could be said to have arrived at a considered decision in its commercial wisdom."

42. In view of the above legal position settled by this Court in the fleet of judgments, it is no more *res integra* that the legislature has given paramount

importance to the “commercial wisdom” of CoC, and that the scope of the judicial review by the Adjudicating Authority (NCLT) is limited to the extent provided under Section 31, and that of the Appellate Authority (NCLAT) is limited to the extent provided under sub-section (3) of Section 61 of the IBC. After a RP is approved by the requisite majority of the CoC, it must pass the muster of Adjudicating Authority under Section 31(1) of the IBC. Section 31 also makes it abundantly clear that once the RP is approved by the Adjudicating Authority, after it is satisfied that the RP as approved by the CoC meets the requirements as referred to in sub-section (2) of Section 30, it shall be binding on the CD and its employees, members, creditors, guarantors and stakeholders. The legislature has consciously not provided for a ground to challenge the justness of the “commercial decision” taken by the Financial Creditors, because one of the dominant purposes of the IBC is revival of the CD and to make it a running concern.

43. While considering the feasibility and viability of the Prospective Resolution Plans, the CoC can always suggest a modification therein and exercise its

commercial wisdom. However, once the RP is approved by the requisite majority of CoC, and when such RP is placed before the Adjudicating Authority for its approval under Section 31, the Adjudicating Authority has to only see whether such RP as approved by the CoC meets the requirements as referred to in Section 30(2). It is only where the Adjudicating Authority is satisfied that the RP does not confirm to the requirements of sub-section (1) of Section 31, it may by an order reject the RP. It is true that the NCLT has to decide all the questions on law or fact arising out of or in relation to the insolvency resolution or liquidation under the residuary jurisdiction vested in NCLT under Section 60(5), however as held in ***Essar Steel*** (supra), such residual jurisdiction does not in any manner impact Section 30(2) of the Code, which circumscribes the jurisdiction of the Adjudicating Authority, when it comes to the confirmation of RP, as has been mandated by Section 31(1) of the Code.

44. Similarly, the scope of interference by the Appellate Authority i.e., NCLAT under Section 61 in the Appeals arising out of the order approving a RP under Section 31, is also very limited and restricted

to the specific grounds mentioned in sub-section (3) of Section 61. The grounds for filing Appeal under Section 61 have to be confined to sub-section (3) thereof.

45. Keeping in view the above settled legal position, let us deal with the three categories of Appeals separately.

(VI) ANALYSIS IN THE FIRST CATEGORY OF APPEALS: -

46. In the First category of Appeals, the impugned order dated 27.01.2022 passed by the NCLAT, in the Company Appeal Nos. 454-455 and 750 of 2021, in relation to the treatment of recoveries from the Avoidance applications provided in the RP submitted by the SRA - Piramal Capital, is under challenge. As stated earlier, the C.A. Nos.1632-1634 of 2022 have been filed by the SRA - Piramal Capital, and C.A. Nos.2989-2991 of 2022 have been filed by the Union of India, challenging the impugned judgment to the extent the NCLAT modified the RP and the C.A. Nos. 3694-3695 of 2022 have been filed by the 63 Moons to the extent the NCLAT sent back the RP to CoC for reconsideration. The NCLAT vide the said impugned

order has set aside the term in the RP that permitted the SRA to appropriate recoveries if any, from Avoidance applications filed upon Section 66 of the IBC, and sent back the RP to CoC for reconsideration on that aspect.

47. The NCLAT treating the Appeals at the instance of 63 Moons as maintainable under Section 61(3) of IBC, observed as under:

> **"9.113** The appellants, aggrieved persons on account of illegalities perpetrated in the approved Resolution Plan, have preferred these appeals, requiring adjudication on an important question of law. Accordingly, these appeals have duly urged the requisite ground for Section 61 (3) of the Code.
>
> **9.114** Providing the benefit of the outcome of avoidance applications to the Resolution Applicant results in unjust enrichment of Respondent No. 2/RA at the expense of all the creditors of the Corporate Debtor. Moreover, the same is vitiated by illegalities and material irregularities, and the same could not have been cured on the pretext of the commercial wisdom of CoC."

48. The NCLAT in the impugned judgment, while acknowledging the proposition that the commercial wisdom of the CoC is supreme so far as commercial aspects of the RP is concerned, held that the said principle is not applicable to the present facts where the issue of illegality has been raised. According to

the NCLAT, the depositors of DHFL are the rightful beneficiaries, if not owners, of the monies that have been siphoned off by the Promoters/Directors of the CD. The NCLAT thereafter taking resort to Regulation 37A of IBBI (Liquidation Process) Regulations, 2016, observed as under:

> **"9.109** Regulation 37A of the IBBI (Liquidation Process) Regulations, 2016 (the "Liquidation Process Regulations"), which empowers a Liquidator to assign or transfer a not readily realizable asset during the liquidation of a Corporate Debtor. The conspicuous absence of a similar provision in the CIRP Regulations, which permits assignment or transfer of recoveries from avoidance transactions to a resolution applicant, supports the case of the Appellant that such recoveries cannot be transferred to a resolution applicant in the CIRP process, which is qualitatively different and distinct from the liquidation process."

49. Ultimately, the NCLAT concluded in Para 16-19 as under: -

> **"16.** Therefore, before approving the Resolution Plan, the Adjudicating Authority was obligated to test the Resolution Plan in terms of Section 30 (2) of the Code. In the instant case, the Administrator referred the matter to CoC to decide on the applicability of the Venus judgement of Delhi High Court in providing the outcome of avoidance transactions to the Successful Resolution Applicant. Adjudicatory power could not have been delegated to the CoC. The Adjudicating Authority has not taken

any decision about the applicability of the Venus judgement on the issue of providing the outcome of avoidance transaction to the resolution applicant. The Adjudicating Authority has stated that "as far as the claims of avoidance transactions, CoC has consciously decided that the money realised through these avoidance transactions would accrue to the members of the CoC. At the same time, they have also consciously decided after a lot of deliberations negotiations that money realised if any under Section 66 of the IBC, i.e. fraud and fraudulent transactions, CoC has ascribed the value of INR one and if any positive money recovery the same would go to the Resolution Applicant of the Corporate Debtor." Therefore, it cannot be considered the findings of the Adjudicating Authority. The CoC was not empowered to exercise such Adjudicatory power and decide. Insolvency Law Committee Report, 2020, specifically provides that the key aim of providing certain transactions is to avoid unjust enrichment of some parties in the insolvency at the cost of all creditors. The underlying policy of such a proceeding is to prevent unjust enrichment of one party at the expense of other creditors. Thus, factual factors such as the kind of transactions being provided, party funding the action, assignment of claims, and creditors affected by transaction or trading may be considered when deciding on the distribution of recoveries. Thus, it was recommended that instead of providing anything prescriptive in this regard, the decision on the treatment of recoveries might be left to the adjudicating authority.

17. Accordingly, the Adjudicating Authority should have decided whether the recoveries vested with the corporate debtor should be applied for the benefit of creditors of the corporate debtor, the successful resolution applicant or other stakeholders. In arriving at

this decision, the Adjudicating Authority may take note of the facts and circumstances of the case and other listed factors.

18. The Respondents have also argued that the possibility of recovering monies from avoidance transactions is very low. However, the amount of the actual recovery that may be made in the future is entirely irrelevant. Since Respondent No. 2 has ascribed a value of INR 1 to the avoidance transactions, Respondent No. 2 has not factored in the avoidance transactions in the Resolution Plan amount. Moreover, there is no material on record to suggest that the avoidance transactions have been factored in Respondent No. 2 's Resolution Plan. Therefore, the oral contention of the Respondents that the avoidance transactions have been factored in the Resolution Plan amount is unsupported and not borne out from the material on record.

19. Therefore, the present appeals ought to be allowed. The term in the Resolution Plan that permits the Successful Resolution Applicant to appropriate recoveries, if any, from avoidance applications filed under Section 66 of the Code ought to be set aside. The Resolution Plan be sent back to the CoC for reconsideration on this aspect."

(i) QUESTIONS:

50. Having regard to the submissions made by the learned counsels for the parties, and to the findings arrived at by the NCLAT in the impugned order, the main question that falls for consideration before this Court is-

"Whether the RP in question approved by the CoC and the NCLT was in contravention of the provisions of any law, for the time being in force, requiring the NCLAT to exercise its jurisdiction under Section 61 of the IBC?"

51. The ancillary questions to the main question would be-

(i) What are the Applications for Avoidance of transactions required to be filed by the Resolution Professional in accordance with Chapter III, and what are the Applications in respect of Fraudulent trading or Wrongful trading required to be filed by the Resolution Professional under Section 66 of the IBC?

(ii) What are the mandatory requirements as referred in sub-section (2) of Section 30 read with Regulation 38 of the Regulations, 2016?

(iii) What is maximization of the value of assets of the Corporate Debtor?

(iv) Whether the NCLAT should have entertained the Appeals of the 63 Moons under Section 61 of the Code and interfered with the commercial wisdom exercised by the CoC?

52. In our opinion, the cumulative answers of the ancillary questions would answer the main question. Therefore, let us first of all examine as to what are the Applications required to be filed by the Resolution Professional, popularly known as the Avoidance Applications?

(ii) <u>AVOIDANCE APPLICATIONS: -</u>

53. One of the duties statutorily cast upon the Resolution Professional in Clause (j) of sub-section (2) of Section 25 of the Code is that the Resolution Professional shall file application for Avoidance of transactions in accordance with Chapter III, if any. Having regard to the said Chapter III, which pertains to "Liquidation Process," it appears that there are three types of Applications that could be filed by the Resolution Professional for avoidance transactions.

(i) Application for avoidance of Preferential transactions under Section 43,

(ii) Application for avoidance of Undervalued transactions under Section 45 and

(iii) Application for avoidance of Extortionate Credit transactions under Section 50.

54. Section 26 specifically states that the filing of an Avoidance Application under Clause (j) of sub-section (2) of Section 25 by the Resolution Professional shall not affect the proceedings of CIRP. Meaning thereby, irrespective of the pendency of the Avoidance Applications filed by the Resolution Professional, the CIRP Proceedings could be proceeded further.

55. So far as Section 66 is concerned, the same falls under Chapter VI and it pertains to the "Fraudulent trading or Wrongful trading." Sub-section 1 of Section 66 provides that if during the CIRP or a Liquidation process, it is found that any business of the CD has been carried on with intent to defraud creditors of the CD or for any fraudulent purpose, the Adjudicating Authority may on the application of the Resolution Professional, pass an order that any persons who were knowingly parties to the carrying on of the business in such manner, shall be liable to make such contributions to the assets of the CD, as it may deem fit. From the bare reading of Section 66(1), it is very much discernible that the said provision pertains to the "Fraudulent trading or Wrongful trading" in respect of the business of the CD.

56. Thus, there is a clear distinction between the Avoidance Applications that may be filed by the Resolution Professional in view of Section 25(2)(j), for avoidance of transactions in accordance with Chapter III of the Code, and the Applications that may be filed by the Resolution Professional in respect of the Fraudulent trading or Wrongful trading under Section 66, which falls under Chapter VI of the Code. The legislature has consciously kept the Applications in respect of Fraudulent trading or Wrongful trading falling in Chapter VI, outside the purview of Section 25(2), which requires the Resolution Professional to undertake the actions and file applications for the avoidance of transactions in accordance with Chapter III. Both, the Avoidance Applications under Chapter III and the Applications in respect of Fraudulent trading or Wrongful trading under Chapter VI, operate in different situations. The powers of the Adjudicating Authority in respect of the Avoidance Applications filed under Chapter III and the powers of the Adjudicating Authority in respect of the Applications pertaining to the Fraudulent and Wrongful trading filed under Chapter VI, have also been separately circumscribed.

57. In the cases of Preferential transactions as contemplated in Section 43, the Resolution Professional may file an Application, when he is of the opinion that the CD, at a relevant time, had given a preference in such transactions, and in such manner as laid down in sub-section (2), to any persons as referred to in sub-section 4 of Section 43. The Adjudicating Authority may pass any of the orders as specified in Clauses (a) to (g) of Section 44, in such Application filed by the Resolution Professional under Section 43(1).

58. Similarly, in the cases of Undervalued transactions as contemplated in Section 45, the Resolution Professional may file an Avoidance Application if he determines that certain transactions were made during the relevant period prescribed under Section 46 which were undervalued. In such applications, the Resolution Professional may pray to declare such transactions as void and to reverse the effect of such transaction in accordance with Chapter III. The Adjudicating Authority may pass any of the orders specified in Clauses (a) to (d) of Section 48 in such Application filed under Section 45(1). He may also pass orders specified in Clause (i) and (ii) of Section

49, in respect of the Undervalued transactions referred to in Section 45(2).

59. In case of Extortionate Credit transactions, as contemplated in Section 50, the Resolution Professional may file Avoidance Application, where the CD had been a party to an Extortionate Credit transaction involving the receipt of financial or operational debt during the period within two years preceding the insolvency commencement date, and where the terms of such transactions required exorbitant payments to be made by the CD. In case of such Extortionate Credit transactions, the Adjudicating Authority may pass any of the orders specified in Clause (a) to (e) of Section 51. It is pertinent to note that in all these types of Avoidance Applications falling under Chapter III, the transactions in question, the properties involved and the persons with whom such transactions were made, could be ascertained by the Adjudicating Authority and therefore it is empowered to pass orders to avoid or set aside such transactions, under Sections 44, 48, 49 and 51, as the case may be.

60. However, in cases of "Fraudulent or Wrongful trading" in respect of the business of the CD as contemplated

in Section 66, the properties and the persons involved may or may not be ascertainable and therefore the Adjudicating Authority is not empowered to pass orders to avoid or set aside such transactions, but is empowered to pass orders to the effect that any persons, who were knowingly parties to the carrying on of business in such manner, shall be liable to make such contributions to the assets of the CD, as it may deem fit. The Adjudicating Authority in such applications may also direct that the Director of the CD shall be liable to make such contribution to the assets of the CD as it may deem fit, as contemplated in Section 66(2). In case of Fraudulent trading or Wrongful trading, it would be a matter of inquiry to be made by the Adjudicating Authority as to whether the business of CD was carried on with intent to defraud creditors of the CD or was carried on for any fraudulent purpose.

61. In view of the above, the Applications filed in respect of "Fraudulent and Wrongful trading" carried on by the CD, could not be termed as "Avoidance Applications" used for the Applications filed under Sections 43, 45 and 50 to avoid or set aside the Preferential, Undervalued or Extortionate

transactions, as the case may be. There is clear demarcation of powers of the Adjudicating Authority to pass orders in the Avoidance Applications filed by the Resolution Professional under Section 43, 45 and 50 falling under Chapter III and the Applications filed by the Resolution Professional in respect of the Fraudulent and Wrongful trading of CD, under Section 66 falling under Chapter VI of the IBC. If the Resolution Professional has filed common applications under Sections 43, 45, 50 and also under Section 66, the Adjudicating Authority shall have to distinguish the same and decide as to which provision would be attracted to which of the Applications, and then shall exercise the powers and pass the orders in terms of the provisions of IBC.

(iii) Mandatory Requirements of Section 30(2) of the IBC and Regulation 38 of Regulations, 2016

62. After having elaborated upon the Avoidance Applications, let us see what are the mandatory requirements, a Resolution Professional is required to confirm on the receipt of the RPs submitted by the PRAs. As per sub-section (1) of Section 30, a RA may submit a RP along with an affidavit stating that he is eligible under Section 29(A), to the Resolution

Professional prepared on the basis of the information memorandum. On the receipt of RPs from the eligible RAs, the Resolution Professional has to examine each RP to confirm that each RP provides for the payment of Insolvency Resolution Process cost in the manner specified by the Board in priority to the payment of other debts of the CD, and provides for the payment of debts of operational creditors in such manner as may be prescribed by the Board, as required under sub-section (2) of Section 30. The Resolution Professional has also to confirm that each RP provides for the management of the affairs of CD after the approval of the RP; the implementation and supervision of the RP; and also that the plan does not contravene any of the provisions of the law for the time being in force, and such other requirements specified by the Board. The other mandatory contents of a RP have been specified in Regulation 38 of the Regulations, 2016.

63. The Resolution Professional, in view of sub-section (3) of Section 30 has to present to the CoC for its approval such RPs which confirm the conditions referred to in sub-section (2) thereof. Sub-Section (4) of Section 30 states that the CoC may approve the

RP by a vote of not less than 66% of the voting share of the Financial Creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst Creditors as laid down in sub-section (1) of Section 53, including the priority and value of the security interest of a secured creditor, and such other requirements as may be specified by the Board.

64. The Resolution Professional then has to submit the RP as approved by the requisite number of votes of CoC to the Adjudicating Authority. In view of sub-section (1) of Section 31, if the Adjudicating Authority is satisfied that the RP approved by the CoC under sub-section (4) of Section 30 meets the requirements as referred to in sub-section (2) of Section 30, it shall by an order approve the RP, which shall be binding on the CD and its employees, members, creditors, statutory authorities, guarantors and stakeholders involved in the RP. Where the Adjudicating Authority is satisfied that the RP does not confirm to the requirements referred to in sub-section (1) of Section 31, it may, by an order reject the RP.

65. Thus, the entire process right from the submission of RPs by the PRAs till the final approval/rejection of the Plan by the Adjudicating Authority has been duly prescribed, which is mandatory in nature. If there is any non-compliance of the mandatory requirements stated in Section 30(2) of IBC, readwith Regulation 38 of the Regulations, 2016, the Adjudicating Authority is empowered to reject the plan as envisaged in sub-section (2) of Section 31. If however, the plan approved by the CoC as per Section 30(4), meets with the requirements under Section 30(2), the Adjudicating Authority has to approve such plan under Section 31(1), which would be binding to all the stakeholders as stated therein.

(iv) Maximization of the value of the assets of the Corporate Debtor

66. Much emphasis was laid, during the course of the arguments, for the maximization of the value of the assets of the CD. It hardly needs to be emphasized that in CIRP, the role of the CoC is that of a protagonist, who takes the key decisions in its commercial wisdom and also takes the consequences thereof. It cannot be gainsaid that the

decisions of CoC must reflect the fact that it has taken into account the maximization of the value of the assets of the CD, and that the interest of all the stakeholders has been adequately balanced. However, "What is maximization of the assets" has not been defined in the Code though stated in the Preamble. Of course, it has been referred in Regulation 37 of the Regulations, 2016, which states that RPs shall provide for the measures as may be necessary for insolvency resolution of the CD, for maximization of the value of its assets, which may include the measures as provided in Clauses (a) to (l) thereof. Since the Preamble of IBC envisages "maximization of the value of the assets of the Corporate Debtor," and to promote entrepreneurship, the measures necessary for maximization of assets stated in Regulation 37, amongst others, will have to be taken into consideration by the CoC while considering the proposed RPs for approval.

67. As observed in ***K. Sashidhar*** (supra), the Financial Creditors forming CoC, act on the basis of thorough examination of the proposed RPs and the assessment made by their team of experts. The entire process has to be carried out in an absolutely

transparent manner, and each and every aspect relating to the RP, and more particularly its financial layout and the measures proposed for maximization of the value of the assets of the CD, has to be placed before the CoC. The CoC, if after considering such measures for maximization of the value of the assets of the CD as proposed by the RA in the RP submitted by it, and considering the feasibility, viability and such other requirements as mandated in the IBC and in the Regulations, 2016, approves the plan with the requisite number of votes as required under Section 30(4), after exercising its commercial wisdom, then the scope of judicial review by the Adjudicating Authority under Section 31 will be limited only to the extent of satisfying itself about the compliance of the requirements of Section 30(2). The judicial review by the Appellate Authority under Section 61 in the appeal against the order of Adjudicating Authority approving the plan, is further limited to the grounds mentioned in Clauses (i) to (v) specified in sub-section (3) of Section 61.

(v) <u>Whether the NCLAT should have entertained the appeals filed by the 63 Moons under Section 61 of the Code and tinkered with the Resolution Plan approved by the CoC and the NCLT? –</u>

68. Keeping in view, the above discussed legal position, let us examine the facts of the case to decide whether the Appellate Authority i.e. NCLAT should have entertained the appeals at the instance of 63 Moons, and interfered with the RP approved by the CoC and NCLT, by tinkering with the isolated clauses of the approved RP which pertained to the treatment of recoveries from the Applications under Section 66 of IBC.

69. As stated earlier, based on the Audit Reports of GT, the auditors appointed by the Administrator to carry out the Transaction Audit and to unearth the transactions that could be avoided/set aside under the IBC, the Administrator had filed the Applications before the NCLT regarding the Preferential, Undervalued and Extortionate Transactions seeking to avoid/set aside the same under Sections 43 to 51 and 66 of IBC. The summary of these Applications referred to by the NCLAT in the impugned order is reproduced hereunder: -

I. 1st Application filed on August 30 2020, under Section 60 (5) & 66 of the Code. The Application is in respect of the investigation and observations of the transaction auditor, filed by the Administrator in respect of disbursements made by DHFL to certain entities, referred to as the Bandra Books Entities, under Section 60(5) and Section 66 of the Code on August 30, 2020, against Kapil Wadhawan, Dheeraj Wadhawan, Township Developers India Ltd, Wadhawan Holdings Private Limited, Dheeraj Township Developers Private Limited, Wadhawan Consolidated Holdings Pvt. Ltd., Wadhawan Global Hotels & Resorts Pvt. Ltd, Wadhawan Lifestyle Retail Pvt. Ltd. and certain other entities. The amount involved therein is Rs. 17,394 crores.

II. 2nd Application was filed on September 27 2020, under Section 60 (5) & 66 of the Code. The Application is about certain irregularities in loan disbursements towards the development of SRA projects undertaken by DHFL in the past. The amount involved therein is Rs. 12,705.53 crores.

III. 3rd Application was filed on October 5 2020, under Sections 45, 46, 49, 60(5) and 66 of the Code. The Application is in relation to the undervalued and fraudulent nature of certain agreements entered into by the Company at the time the Company sold its stake in Pramercia Life Insurance Limited to DHFL Investments Limited and certain ICDs given by the DHFL to ICD entities. The amount involved therein is Rs. 2, 150.84 crores.

IV. 4th, 5th and 6th Applications filed in December 2020 - The Applications are about:
a. Disbursement to specific entities in the form of loans against property and utilisation of the same towards premature redemption of certain

NCDs, undertaken by DHFL in the past under Sections 43, 45 and 66 of the Code - as Application "A".
b. Diversion of excess funds from the account of DHFL for purchase of NAPHA Building under Section 66 of the Code as Application "B".
c. Fraudulent and undervalued advancement of ICDs by DHFL to certain entities in the past and the subsequent creation of a pledge over the non-convertible debentures issued by DHFL under Sections 45 and 66 of the Code - as Application "C".

A copy of the letter dated December 13, 2020, issued by Respondent No. I to Stock Exchange summarising the said transaction is annexed with Appeal Paper book. The amount involved therein is Rs.1,058.32 crores.

V. 7th Application filed on February 3 2021, under Sections 45, 60 (5) and 66 of the Code - The Application is about disbursement made to certain entities as developer loans and loans against property. The amount involved therein is Rs. 4,793.36 crores.

VI. 8th Application was filed on February 20 2021, under Section 45, 60 (5) and 66 of the Code. The Application is in relation to irregularities in disbursements of Other Large Product Loan (OLPL) by the DHFL in the past. The amount involved therein is Rs. 6,182.11 crores.

The details of the Avoidance applications in the tabular chart are mentioned below:

Rs. Crores (Approx)

Sr. No.	Avoidance Application date	Reference	Section	Principal (in Crores)	Interest +Notional amount	Total (in Crores)
1.	30.08.2020	Bandra Books	**60(5) and 66**	**14046**	3348	17394
2.	27.09.2020	SRA Loans	**60(5) and 66**	**10980**	1726	12706
3.	05.10.2020	DIL Transaction	**45, 46, 49,**	**1740**	125	1865
			60(5) & 66	**228**	58	286
4.	12.12.2020	LAP Loans	**43, 45 and 66**	**592**	56	648
5.	12.12.2020	NAPHA Properties	**66**	**330**		330
6.	12.12.2020	ICD	**45 and 66**	**71**	9	80
7.	03.02.2020	DLAP Loans	**45, 60(5) & 66**	**4793**	766	5559
8.	20.02.2021	OLPL Loans	**45, 60(5) & 66**	**5382**	800	6182
	Total filed		**Total figures in crores**	**38161**	**6889**	**45050**

70. As transpiring from the voluminous documents produced on record by the learned counsels for the parties, it appears that during the course of meetings of CoC, the PRAs had submitted various RPs, amongst which a RP dated 16.10.2020, was submitted by the Piramal Capital bidding for Group A assets under Option II offering 15,000 crores plus an amount of 10% for FD Holders. Then, a RP dated 09.11.2020 was submitted bidding for Group A assets under Option II offering bid amount of Rs.23,700 crores. Another RP dated 17.11.2020 was submitted

bidding for Group A assets under Option II offering bid amount of Rs.27,500 crores. RP dated 14.12.2020 was submitted bidding for the entire assets under Option I offering bid amount of Rs.34,950 crores, and bidding for Group A assets under Option II offering bid amount of Rs.27,200 crores. Lastly, Piramal Capital presented the RP dated 22.12.2020 bidding for the entire assets under Option I for Rs. 37,250 crores, or for Group A assets under Option II bidding for Rs.27,200 crores. The treatment of Avoidance transactions under the Resolution Plan dated 22.12.2020 was as under: -

> "Re: Treatment of avoidance transactions under the Resolution Plan.
>
> (xxxi) As regards avoidance transactions, the Resolution Plan provided as follows, in line with the RFRP dated 16 September 2020:
>
> "2.13. Treatment of preferential transactions, undervalued transactions, extortionate transactions and fraudulent trading.
>
> 2.13.1. The Administrator shall submit, to the CoC, details of the transactions avoided or set aside by the NCLT in terms of Section 43, 45, 47, 49, and 50 of the IBC (Avoidance Transactions), if any, observed, found or determined by him and the orders, if any, of the NCLT in respect of such transactions.
>
> 2.13.2. The Resolution Applicant intends to pursue, on a best-efforts basis, the

application(s) filed by the Administrator before the NCLT in respect of these Avoidance Transactions. Any positive monetary recovery received by the Company as a result of orders passed in relation to the Avoidance Transactions shall be distributed, net of costs and expenses (including taxes), to the Financial Creditors pro rata to the extent the Financial Debt for Financial Creditors, provided that, the CoC may in its discretion adopt a different manner of distribution (which may take into account the order of priority amongst Financial Creditors as laid down in section 53(1) of section of the IBC and such decision of the CoC shall be accepted by the Resolution Applicant, subject to there being no change in the Total Resolution Amount.

2.13.3. The Resolution Applicant ascribes value of INR 1 in respect of any transactions that may be avoided/set aside by the NCLT in terms of section 66 of the IBC. Accordingly, any positive recovery as a result of reversal of transactions avoided or set aside by the NCLT in terms of section 66 of the IBC would accrue to the sole benefit of the Resolution Applicant. All the costs and expenses incurred or to be incurred towards litigation pertaining to section 66 of the IBC shall be to the account of the Resolution Applicant. "

71. The Chart juxtaposing the Provisions of RFRP dated 16.9.2020 and the Provisions of the RP dated 22.12.2020 in respect of treatment of avoidance

transactions produced at Annexure-A/7 in C.A. No.1632-1634 of 2022 may be reproduced as under:-

Provisions of the RFRP dated 16 September 2020	**Provisions of the Resolution Plan**
3.13.2.[…] … (w) In the event any transaction is avoided/set aside by the Adjudicating Authority in terms of Sections 43,45,47,49,50 of the IBC, and any amount is received by the Administrator or the Resolution Applicant/Corporate Debtor (as the case may be) in accordance with such decision of the Adjudicating Authority, such sums shall be for the benefit of the CoC and shall be a pass through amount to the creditors, subject to clause (x) below.	2.13.1. The Administrator shall submit to the CoC, details of the transactions avoided or set aside by the NCLT in terms of Section 43, 45, 47, 49 and 50 of the IBC (**Avoidance Transactions**), if any, observed, found or determined by him and the orders, if any, of the NCLT in respect of such transactions. 2.13.2. The Resolution Applicant intends to pursue, on a best efforts basis, the application(s) filed by the Administrator before the NCLT in respect of these Avoidance Transactions. Any positive monetary recovery received by the Company as a result of orders passed in relation to the Avoidance Transactions shall be distributed, net of costs and expenses (including taxes), to the Financial Creditors *pro rata* to the extent the Financial Debt for Financial Creditors, provided that, the CoC may in its discretion adopt a different manner of distribution (which may take into account the order of priority amongst Financial Creditors as laid down in Section 53(1) of the IBC) and such decision of the CoC shall be accepted by the Resolution Applicant, subject to there being no change in the Total Resolution Amount.
3.13.2. […] …(x) In respect of any transactions that may be avoided/set aside by the Adjudicating Authority in terms of Section 66 of the IBC, the Resolution Applicant shall ascribe a value under the	2.13.3. The Resolution Applicant ascribes value of INR 1 in respect of any transactions that may be avoided/set aside by the NCLT in terms of Section 66 of the IBC. Accordingly, any positive recovery as a result of reversal of transactions avoided or set aside by the NCLT in terms of Section 66 of the IBC would

Resolution Plan to any recoveries that are likely to be made in respect of such transactions and shall propose the manner of continuing and dealing with any legal action initiated and the proposed manner of treatment of any proceeds arising therefrom which the CoC may evaluate as per its discretion.	accrue to the sole benefit of the Resolution Applicant. All the costs and expenses incurred or to be incurred towards litigation pertaining to Section 66 of the IBC shall be to the account of the Resolution Applicant.

72. As stated hereinabove, the CoC approved the RP submitted by the Piramal Capital under Option I for the entire assets of the CD offering aggregate amount of Rs.37,250 crores, by majority with 93.65% votes.

73. As can be seen from the record, the 18th Meeting of CoC was convened on 24.12.2020-25.12.2020, and all legally Compliant RPs received by the Administrator were presented for consideration and were put to vote during the voting window 30.12.2020 - 15.01.2021. The NCD Holder - 63 Moons also voted in favour of the RP within its class of Debenture Holders, and the RP was approved by a majority of 98.94% votes of the Debenture Holders. The Authorized Representative of the class of Debenture Holders (M/s. Catalyst Trusteeship Limited) also voted in favour of the RP before the CoC. As a result thereof, the RP was approved by the majority of CoC with 93.65% votes exercising their commercial

wisdom. It is also very pertinent to note that the said 18th meeting of CoC was attended not only by the Financial Creditors and the Administrator/Resolution Professional, but also by the representatives of the Financial Creditors, the Advisory Committee of the Administrator, the Legal Counsels of CoC, 29A Consultants, Valuers etc.

74. When the Administrator/Resolution Professional filed an application being I.A. No.449 of 2021 (Plan Approval Application) before the NCLT seeking approval under Section 31 of IBC on 24.02.2021, the 63 Moons filed an I.A. being No. 623 of 2021 on 05.03.2021, challenging the provisions of RP which provided that the Recoveries under Section 66 would go to the benefit of SRA. The NCLT vide order dated 07.06.2021 granted its approval to the Plan Approval Application filed by the Administrator, and by separate order dismissed the I.A. No. 623 of 2021 filed by the 63 Moons, holding that the CoC comprising of 77 Financial Creditors had decided in its commercial wisdom to give away the Section 66 Recoveries to the SRA after a hard bargain in exchange of a lumpsum resolution amount of INR 37,250 crores.

75. The NCLAT however entertained the Appeals at the instance of the Appellants – 63 Moons and Roopjyot Engineering Private on the ground that the SRA could not have appropriated the Recoveries from the Avoidance Applications under Section 66 IBC, and that the NCLT while approving the RP had not decided whether the recoveries in respect of the Avoidance transactions vested with the CD, should be applied for the benefit of the Creditors of CD, SRA or other Stakeholders. In our opinion, such an approach on the part of NCLAT was not only *ex facie* fallacious and erroneous but also in utter disregard of the legal position settled by this Court in catena of decisions.

76. It is interesting to note that the Appellants before the NCLAT, i.e. – 63 Moons Technologies Limited, Roopjyot Engineering Private Limited, Magico Exports and Consultants Limited, Richmond Traders Private Limited and Sunshine Fibre Private Limited, were the NCD Holders, belonging to different sub-classes. They were represented in CoC by a Debenture Trustee – M/s. Catalyst Trusteeship Private Limited (CTPL). The details of these NCD Holders including their Voting Pattern and Payout

were submitted in tabular form before the Court by the learned counsel appearing for the SRA, which is reproduced as under: -

Creditor	**Share in CoC**	**Voting Pattern**	**Payout**	**Other Information**
63 Moons Belonged to the class: Catalyst Trusteeship Limited (Secured Public Issue – 2)	0.2% Held *NCDs* of face value INR 200 Crores.	Voted in favour of the Plan. As a class, these NCD holders approved the plan by **98.94 %** majority.	Received about 40% of their admitted claims without any protest or demur.	No other justification provided for voting in favour of the plan
Roopjyot & Ors. Belonged to the class: Catalyst Trusteeship Limited (Secured Public Issue – I)	Less than .01% Held *NCDs* of purchase value INR 49.4 Crores.	Abstained from voting. As a class, these NCD holders approved the plan by **94.67 %** majority	Received payments under the Resolution Plan without any protest or demur.	They did not raise any grievance before the CoC or the NCLT and challenged the Resolution Plan for the first time only before the NCLAT.

77. As can be seen from the above table, the said Appellants' respective classes had voted overwhelmingly in favour of the RP of SRA. Neither the 63 Moons nor Roopjyot & Ors. had voted against the RP nor any justification was offered by them for not voting against the RP. Under the circumstances the said Appellants – NCD Holders before the NCLAT were bound by the decision of their classes in approving the RP, and were estopped from raising any objection against the RP approved by the CoC. Indubitably, as per sub-section 3A of Section 25A, the Authorized Representative under sub-section 6A of Section 21 has a right to cast his vote on behalf of all the Financial Creditors he represents, in accordance with the decision taken by a vote of more than 50% of voting share of the Financial Creditors he represents, who have cast their vote. The vote cast by the Authorized Representative of the class of Financial Creditors, is a vote on behalf of each Financial Creditor to the extent of his voting share. Once the said process is carried out and the Authorized Representative is handed down a particular decision by the requisite majority of voting share, he has to vote accordingly, and his vote would

bind all the Financial Creditors he represented. The individual Financial Creditor would thereafter be estopped from raising objection against the decision taken by the majority of the Financial Creditors. As observed in ***Jaypee Kensington Boulevard Apartments Welfare Association & Others vs. NBCC (India) Limited & Others,***[10] in the larger benefit and for common good, the democratic principles of the determinative role of the opinion of majority have been duly incorporated in the scheme of the Code, particularly in the provisions relating to voting on RP and binding nature of the vote of Authorized Representative, on the entire class of the Financial Creditors he represents. If the finality and binding force is not provided to the votes cast by the Authorized Representatives of a class of Financial Creditors, a plan of resolution involving large number of parties may never fructify. In the instant case, the vote cast by the Authorized Representative - M/s. Catalyst Trusteeship on behalf of the class of Financial Creditors he represented, was binding on the 63 Moons and other Appellants before the NCLAT, and therefore they were estopped from

[10] **2021 SCC Online SC 253 (Para. 424)**

raising any objection before the NCLT or NCLAT against the RP approved by the requisite majority of CoC.

78. The NCLAT has also erroneously placed reliance on the decision of the Single Bench of the Delhi High Court in ***Venus Recruiter*** (supra). Apart from the fact that the said judgment of Single Bench was set aside by the Division of the said High Court in LPA No. 37 of 2021 (***Tata Steel BSL Limited vs. Venus Recruiter Private Limited and Others)*** decided on 13.01.2023, the whole reliance on the said decision was thoroughly misconceived and misplaced. In the said case, the question for consideration was whether an Avoidance Application under Section 43 of IBC could survive after the approval of RP. The question of considering the treatment of the proceeds of the Avoidance Applications was not involved as involved in the instant case.

79. The reliance on the Regulation 37A of the Liquidation Regulations by the NCLAT was also thoroughly misplaced for holding that the said Regulation empowered a Liquidator to assign or transfer a non-realisable asset during the liquidation of a CD, however such provision is absent in CIRP

Regulations, 2016. In our opinion, when Section 26 specifically states that the filing of an Avoidance Application under Section 25(2)(j) by the Resolution Professional shall not affect the proceedings of CIRP, and when the Regulation 37(a) of the CIRP Regulations 2016 also permits a provision to be made in the RP for transfer of all or part of the assets of Corporate Debtor to one or more persons, the reference of Regulation 37A of Liquidation Process Regulations in the impugned order was absolutely unwarranted and *ex-facie* fallacious.

80. Similarly, the NCLAT has also misdirected itself by relying on the foreign texts and jurisprudence, which could not be made applicable to the insolvency regime of India. Apart from the fact that such foreign texts and precedents relied upon by the NCLAT merely indicated that the proceeds from the Avoidance Applications may be for the benefit of the creditors in a situation when the RP does not deal with its treatment, it is well settled by this Court that the Court should be wary of transplanting international doctrines, which might have been evolved as responses to the specific needs of the jurisdictional regimes.

81. The submission, with regard to the notional value of INR 1 ascribed to Section 66 Applications under the RP, made by the learned counsel appearing for the Respondents in the Appeals filed by the Piramal Capital deserves to be considered only for its rejection. As transpiring from the record of the case, notional valuation of Section 66 Applications was made in response to the provision of RFRP issued by the Administrator. In the valuation reports submitted by the Valuers appointed by the Administrator, NIL value was ascribed to the Avoidance Applications filed by the Administrator, and accordingly the other compliant RAs had also ascribed NIL value to the said Applications. However, according to the SRA, since clause 3.13.2(x) of RFRP required the RAs to ascribe a value to Section 66 applications and then propose a manner of treatment of recoveries from such applications, the SRA had ascribed INR 1 as a notional valuation of the applications under Section 66.

82. In our opinion, having regard to the Fraudulent trading and Wrongful trading allegedly made by the DHFL, any guess work done by the compliant RAs would have been a wild guess due to the

uncertainties in recovery of the amount involved in such Fraudulent and Wrongful trading. The value of INR 1 being notional and the CoC having considered the fact that the potential recoveries from the Section 66 Applications was very uncertain had taken conscious decision in accepting the said clause in the RP submitted by the SRA. The relevant Clause 2.13.2 of RP provided that any positive monetary recovery received by the company (SRA) as a result of the orders passed in relation to avoidance transactions shall be distributed, net of costs and expenses (including taxes), to the Financial Creditors *pro rata* to the extent the financial debt for the Financial Creditors provided that the CoC may in its discretion adopt a different manner of distribution. Therefore, while ascribing a notional value of INR 1 to the Applications under Section 66, the SRA had agreed for the distribution of the recoveries that may be made under the Avoidance Applications filed under Sections 43, 45, 47, 49 and 50 for the benefit of the CoC.

83. During the course of hearing of these Appeals also, the learned Senior Advocate Mr. Abhishek Manu Singhvi for the SRA and the learned Senior Advocate

Mr. Tushar Mehta appearing for the CoC had stated in no uncertain terms that the benefit of avoiding/setting aside of any transaction under Sections 43, 45, 47, 49 and 50 shall enure to the benefit of the Creditors of DHFL, whereas any recovery under Section 66 would be for the benefit of Piramal Capital. As discussed earlier, the SRA had raised its offer to the extent of Rs.37,250 crores, which had factored the potential recoveries from Section 66 Applications. Thus, the RP approved by the CoC was an outcome of the commercial bargain struck between the SRA and the CoC after several rounds of negotiations and deliberations. The said plan approved by the CoC was also further approved by the NCLT under Section 31(1) of IBC. In absence of any perversity, that was palpable on the face of the approved RP, and the CoC having taken a firm commercial decision with regard to the impugned clause of RP by voting overwhelmingly in favour of the RP, the NCLAT ought not to have interfered with the said clause of RP approved by the CoC and the NCLT.

84. As per the legislative intent and as per the broad contours of the provisions of IBC, the commercial wisdom of CoC has been given the prominent status, with the least judicial intervention, for ensuring the completion of Resolution Process within the prescribed timelines. As stated earlier, in ***Essar Steel*** (supra), this Court after discussing earlier judgments had observed that what is left to the majority decision of the CoC is the "feasibility and viability" of a RP, which obviously takes into account all aspects of the plan, including the manner of distribution of funds among the various classes of Creditors. The legislature has consciously not provided for a ground to challenge the justness of the commercial decision expressed by the Financial Creditors – be it to approve or reject the RP. Similar view is taken by the Three Judge Bench in ***Ghanashyam Mishra*** (supra) to the effect that the legislature has given paramount importance to the commercial wisdom of the CoC and the scope of judicial review by the Adjudicating Authority is limited to the extent provided under Section 31 and by the Appellate Authority limited to the extent provided under sub-section (3) of Section 61 of IBC.

85. The NCLAT therefore has clearly transgressed its jurisdiction under Section 61 IBC, by interfering with the clause pertaining to the treatment to the recoveries from the Fraudulent and Wrongful trading under Section 66.

86. It appears that the Administrator has filed common applications under Sections 43, 45 and 50 falling under Chapter III and the Applications pertaining to Fraudulent and Wrongful trading under Section 66 falling under Chapter VI before the NCLT. The Administrator, as such should have mentioned in the Applications the specific provisions under which such Applications were filed, however non-mentioning or wrong mentioning of provision of law in the Applications would not take away the jurisdiction of the NCLT in deciding the said Applications, as the NCLT being the Adjudicating Authority is competent and has jurisdiction to decide all such Applications. It is well settled proposition of law laid down by a Three-Judge Bench of this Court in ***N. Mani v/s Sangeetha Theatre,***[11] that if an authority has a power under the law, merely because while exercising that power, the source of power is not specifically referred to or a

[11] **(2004) 12 SCC 278**

reference is made to a wrong provision of law, that by itself would not vitiate the exercise of power, so long as the power exists and can be traced to a source available in law. We have already elaborately discussed about the scope and powers of NCLT to pass orders in Avoidance Applications as circumscribed in Sections 44, 48, 49 and 51 and the powers of the NCLT to pass orders in the applications filed under Section 66. Hence, it is directed, for the sake of clarity, that the NCLT shall decide each of the Applications filed by the Administrator and pending before it after considering the relevant provisions applicable to such Applications, and shall pass the orders accordingly in terms of the provisions contained in Sections 44, 48, 49 and 51 falling under Chapter III and in terms of provisions contained in Section 66 falling under Chapter VI, as the case may be.

87. In view of the aforesaid discussion and findings, all the Appeals in this category deserve to be allowed by setting aside the impugned order dated 27.01.2022 passed by the NCLAT and restoring the order dated 07.06.2021 passed by the NCLT in the Plan Approval Order.

(VII) ANALYSIS IN THE SECOND CATEGORY OF APPEALS

88. The Second category of Appeals cover the Appeals filed by several Fixed Deposit Holders and one Non-Convertible Debenture Holder of the CD, challenging the RP dated 22.12.2020. The details of the said Appellants and the impugned judgments may be stated as under: -

(1) *Raghu KS and Ors. vs. Piramal Capital & Housing Finance Limited & Ors.* (Diary No.6037 of 2022)*:* This Civil Appeal has been filed by 41 individual FD Holders challenging the judgment dated 07.02.2022 passed by the NCLAT in Company Appeal No. 538 of 2021. PCHFL is Respondent No.1 in this appeal.

(2) *Vinay Kumar Mittal & Ors. vs. Dewan Housing Finance Corporation Ltd. & Ors.* (Civil Appeal No.2413-2415 of 2022) ("V.K. Mittal")*:* These appeals have been filed by 14 individual FD Holders challenging the common judgment dated 27.01.2022 passed by the NCLAT in Company Appeal Nos.506, 507 and 516 of 2021. PCHFL is Respondent No.6 in these Appeals.

(3) *Uttar Pradesh State Power Sector Employees Trust vs. Dewan Housing Finance Corporation Ltd. & Anr.* (Civil Appeal No.2396 of 2022)*:* The Appellant in this Appeal was a FD Holder of the CD and has challenged the common judgment dated 27.01.2022 passed by the NCLAT in Company Appeal Nos.759, 760 of 2021. PCHFL is Respondent No.1 in this Appeal.

(4) *Uttar Pradesh State Power Corporation Contributory Provident Fund Trust vs. Dewan Housing Finance Corporation Limited and Anr.* (Civil Appeal No.2402 of 2022)*:* The Appellant herein was a FD Holder of the CD and has challenged the common judgment dated 27.01.2022 passed by the NCLAT in Company Appeal Nos.759, 760 of 2021. PCHFL is Respondent No.1 in this Appeal.

(5) *Senbagha Vivek A. & Anr. vs. Dewan Housing Finance Corporation Ltd. & Anr.* (Civil Appeal No.8123-8125 of 2022)*:* The Appellants herein were two individual FD Holders of the CD and have challenged the common judgment dated 27.01.2022 passed by the NCLAT in Company

Appeal Nos. 506, 507 and 516 of 2021. PCHFL is Respondent No.6 in this Appeal.

(6) *THDC India Limited Employee Fund vs. The Administrator, Dewan Housing Finance Corporation Ltd.* (Civil Appeal No.6286 of 2022)*:* Insofar as this Appeal is concerned, the Appellant herein ("THDC") represents NCD Holders of the CD. THDC has challenged the judgment dated 04.02.2022 passed by the NCLAT in Company Appeal No.90 of 2022. In the CoC, the appellant's class voted in favour of the RP. THDC did not raise any objection against the RP before the NCLT and filed the Appeal directly before the NCLAT against the order dated 07.06.2021 approving the Resolution Plan ("Plan Approval Order").

89. **Leave granted** in the **Diary No.6037 of 2022.**

90. The facts have already been narrated while dealing with the First Category of Appeals, and therefore are not repeated here. Suffice it to state that the CD was admitted into CIRP on 03.12.2019. The Piramal Capital had submitted the RP, which came to be approved by a majority of 93.65% of the CoC of the CD. The aggregate claim of FD Holders as a class

was INR 5,375 Crore and their voting share was about 6.18%. The CoC in its 18th Meeting had passed two Resolutions which were placed for voting, one for approval of RP and second for approval of the Distribution mechanism for the disbursal of the total resolution amount amongst the creditors. The Distribution mechanism was approved by the majority of 86.95% of CoC. Under the Distribution mechanism, it was provided as under: -

(i) FD Holders having an admitted claim of upto INR 2 lakhs were to be repaid their entire deposit amount; and

(ii) FD Holders having an admitted claim of more than INR 2 lakhs would receive an amount equivalent to liquidation value of security created for the benefit of the Depositors for the additional aggregate claim above INR 2 lakhs.

91. Some of the FD Holders including the Appellants in this second category of Appeals, challenged the said RP before the NCLT on the ground that the RP had failed to provide for full repayment of their deposits.

92. The NCLT on 07.06.2021 approved the said RP by passing the Plan Approval Order. The NCLT also passed a separate order disposing of the

Applications filed by the FD Holders recommending that CoC may reconsider the distribution of resolution amount keeping in view the interest of the FD Holders and other small investors. In the light of the said order, the CoC in its 20th Meeting put to vote a Resolution for maintaining parity between the FD Holders and other Secured Creditors. The said Resolution was rejected by approximately 89% of CoC. The aggrieved Appellants – FD Holders filed the Appeals before the NCLAT challenging the FD Holders order dated 07.06.2021, on the ground that the treatment to the FD Holders violated their rights under the RBI Act and NHB Act to receive full payment of their deposits. The NCLAT vide the impugned orders dismissed all the Appeals against which the present set of Appeals have been filed.

(i) <u>WHETHER THE RESOLUTION PLAN VIOLATED THE PROVISIONS OF RBI ACT OR NHB ACT?</u>

93. The bone of contention raised by the learned Counsels for the Appellants – FD Holders in this set of Appeals was that the Distribution mechanism contained in the RP was in violation of Section 36(A) of NHB Act and Section 45(QA) of RBI Act, in as

much as the FD Holders were entitled to the full payment of their deposits, in view of the said provisions. In this regard, it may be noted that the NHB Act has been enacted to establish a Bank to be known as “National Housing Bank” to operate as a principal agency to promote housing finance institutions both at local and regional levels and to provide financial and other support to such institutions and for the matters connected therewith or incidental thereto. As per Section 2(d) of the said NHB Act, “Housing Finance Institution” includes every institution, whether incorporated or not, which primarily transacts or has any one of the principal objects, the transacting of the business of providing finance for housing, whether directly or indirectly. The Chapter V of the said NHB Act incorporates the provisions relating to the “Housing Finance Institutions.” Section 28 thereof states that in this Chapter the term ‘deposit’ shall have the meaning assigned to it in Section 45-I of the RBI Act. Further Section 36(A) of the NHB Act empowers the Officer authorized by the Central Government, to direct the housing finance institution, which fails to repay any deposit accepted by it in accordance with the terms

and conditions of deposit, to make repayment of such deposit or part thereof, if he is satisfied that it is necessary to do so to safeguard the interest of the housing finance institution, the depositors or in the public interest.

94. The RBI Act has been enacted to regulate the issue of Bank notes and the keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to regulate to its advantage. The Chapter III(B) of the RBI Act incorporates the "Provisions relating to the Non-Banking Institutions receiving deposits and financial institutions." Section 45-I(bb) defines "Deposit" and Section 45-I(f) defines "Non-Banking Financial Company." Section 45(QA) empowers the Company Law Board (CLB) to direct by order, the Non-Banking Financial Company which has failed to repay the deposit accepted by it in accordance with the terms and conditions of such deposit, to make repayment of such deposit or part thereof, if the CLB is satisfied that it is necessary to do so to safeguard the interest of the company, the depositors or in the public interest.

95. It is not disputed that the CD – DHFL being a Housing Finance Institution and Non-Banking Financial Company, was governed by the NHB Act and RBI Act, however pertinently, neither Section 36(A) of NHB Act nor Section 45 (QA) of RBI Act mandates full payment of the deposits of the FD Holders, as sought to be contended by the learned counsels for the Appellants. Both the Sections 36(A) of NHB Act and 45(QA) of the RBI Act containing almost similar provisions, require the Housing Finance Institution or the Non-Banking Financial Company, as the case may be, to repay the deposits accepted by it in accordance with the terms and conditions of such deposit, however from the bare reading of the said provisions it clearly transpires that in case of non-payment of such deposits, the authorized officer or the CLB as the case may be on being satisfied that it is necessary to safeguard the interest of the company, or of the depositors in the public interest may direct such institution or the company to make repayment of such deposit or part thereof. None of the said provisions mandates full payment of deposits or confers any right upon the depositors to have full payment of such deposits. There is also

nothing on record to suggest that any authorized officer under the NHB Act or the CLB under the RBI Act has passed any order to make full payment of deposits to the Appellants. Hence, it could not be said, by any stretch of imagination, that the RP in question, providing for the Distribution mechanism, was contrary to any of the provisions of the RBI Act or of the NHB Act.

96. It is also pertinent to note that the Appellants – FD Holders were represented in the CoC by their Authorized Representative - Ms. Charu Desai and the NCD Holders were represented in the CoC by their Authorized Representative - M/s. Catalyst Trusteeship Limited, as permitted under Section 21 (6A) (b) of IBC readwith Regulation 16 (A) of the CIRP Regulations, 2016. Such Authorized Representatives are entitled to attend the meetings and vote in the CoC on behalf of the Group of Creditors that they represent, in accordance with the prior instructions they would have received from their respective groups. It is true that in the instant case, the FD Holders, as a class, had voted against the RP and the Distribution mechanism, and were thus classified as the “Dissenting Financial Creditors.”

However, the said Distribution mechanism was approved by a majority of 86.95% of CoC. The Appellants – FD Holders therefore had filed applications before the NCLT. The NCLT vide the order dated 07.06.2021 approved the RP by passing Plan Approval Order, and by separate order disposed of the Applications filed by the FD Holders, recommending the CoC to reconsider the Distribution mechanism in the interest of various creditors viz. Public Depositors, FD Holders, NCD Holders, Small Investors, EPF Trust etc.

97. As stated earlier, the CoC rejected the said recommendation by approximately 89% of the CoC in its 20th Meeting, which decision came to be challenged before the NCLAT. The NCLAT also vide the impugned order dismissed the same by holding *inter alia* that the Administrator was under no obligation to ensure full payment of deposits to the FD Holders under the RBI Act or the NHB Act, and that the decision about the payments to the creditors fell within the commercial wisdom of CoC which was not amenable to judicial review, subject to fair and equitable play. We do not find any legal infirmity in the said impugned order passed by the NCLAT. We have

already discussed in detail about the scope of judicial review by the NCLT under Section 31 and by NCLAT under Section 61 of the IBC, and the legal position settled by this Court in catena of decisions. Hence, the same is not reiterated herein.

98. We also do not find any substance in the submissions made by the learned counsels for the Appellants that the RP violated Rule 5(d)(i) of the Financial Service Providers and Application to Adjudicating Authority Rules, 2019 (FSP Rules). In this regard, it may be noted that the said Rule 5(d)(i) states that "the Resolution Plan shall include a statement explaining how the Resolution Applicant satisfies or intends to satisfy the requirements of engaging in the business of the Financial Service Provider, as per laws for the time being in force." The learned Counsel appearing for the SRA – Piramal Capital had drawn the attention of the Court to the comprehensive statement included in "Part B – Business Plan" of the RP to the effect that the SRA had the expertise and experience in the financial sector and the ability to carry out the business of the CD as a Financial Service Provider. Such being the compliance of the said Rule 5(d)(i) of FSP Rules, it could not be said that there was any

violation of any law for the time being in force as contemplated in Section 30(2)(e) of IBC and as sought to be contended by the learned counsels for the Appellants – FD Holders.

99. In that view of the matter, all the Appeals filed by the Appellants in this Second Category of Appeals being devoid of merits deserve to be dismissed.

(VIII) ANALYSIS IN THE THIRD CATEGORY OF APPEALS

100. In this Third category, following Appeals are covered: -

(1) The Civil Appeal Nos. 1707-1712 of 2022 have been filed by the ex-promoter Kapil Wadhawan challenging the impugned judgment and order dated 14.02.2022 in Company Appeal No. 539 of 2021 passed by the NCLAT, dismissing the Appellants challenge to the RP of Piramal Capital, which was approved by the NCLT vide order dated 07.06.2021.

(2) The Appellant Kapil Wadhawan has also challenged the common impugned judgment and order dated 27.01.2022 in Company Appeal No. 785 of 2020 and 674 of 2021 passed by the

NCLAT holding that the Appellant, though was erstwhile Director, Promoter, Shareholder and Guarantor of DHFL, had no right to a copy of RP approved by the CoC.

(3) The Appellant Kapil Wadhawan has also challenged the common impugned judgment and order dated 27.01.2022 in Company Appeal Nos. 370, 376-377 and 393 of 2021 passed by the NCLAT, whereby the NCLAT has set aside the order dated 19.05.2021 passed by the NCLT directing the CoC to consider and vote on 2nd Settlement Proposal of KW of the Appellant.

(4) The Civil Appeal No. 2567 of 2022 has been filed by another ex-promoter Dheeraj Wadhawan challenging the common impugned judgment and order dated 27.01.2022 in Company Appeal No. 785 of 2020 and 647 of 2021 passed by the NCLAT, holding that the erstwhile Director, Promoter, Shareholder and Guarantor of DHFL was not entitled to participate in the meeting of CoC.

(5) The Civil Appeal Nos. 2987-2988 of 2022 have been filed by the SRA – Piramal Capital challenging the impugned judgment and order

dated 27.01.2022 in Company Appeal No. 785 of 2020 and 647 of 2021 passed by the NCLAT, in which it has been held that the erstwhile Directors who had vacated the offices were not entitled to share any document, however the copy of RP after the approval from Adjudicating Authority cannot be treated as a confidential document, and therefore a certified copy may be issued to the erstwhile Directors as per the Rules.

101. The core issue raised by learned Senior Counsel Mr. Kapil Sibal appearing for the erstwhile Directors KW and DW was that the Resolution Professional, that is the Administrator in this case, and the CoC had not undertaken any efforts for value maximization of DHFL's assets and businesses, which is the underlying object of the IBC. According to him the Appellants – Ex-Promoters/ Directors were kept out of the entire CIRP proceedings and were not given any opportunity to participate in the said proceedings under the guise that the entire Board of Directors of DHFL was superseded under the RBI Act, and therefore the Ex-Directors did not have any right, which suspended Directors would have under the IBC. Mr. Sibal had strenuously taken the Court to the

voluminous record and raised all possible issues, with regard to the Clause in question, with regard to the treatment to Recoveries under the Applications filed under Section 66 of the Code and the permissibility of ascribing INR 1 towards such transactions etc. In short, Mr. Sibal had vehemently challenged the commercial wisdom exercised by the CoC while approving the plan.

102. We have already discussed and dealt with, in the earlier part of this judgment, all the said issues including the scope of judicial review by the NCLT and NCLAT over the commercial wisdom exercised by the CoC, and also examined the legality of the clause in the RP with regard to the treatment of Recoveries from the Avoidance Applications. We have also examined in detail the issue with regard to the maximization of the value of assets of the CD. Hence, the same are not dealt with in this set of Appeals. Suffice it to say that when majority of the creditors in their wisdom, and after negotiations with the PRA as to how and in what manner the Corporate Resolution Process should be undertaken, had explored the feasibility and viability of the RP, while approving the same, and when the said Plan was

also approved by the NCLT, the NCLAT ought not to have tinkered with a Clause of the said Plan with regard to the treatment of Recoveries from the Applications under Section 66 of the IBC.

103. So far as the right of the Ex-Directors/ Promoters to participate in the Meetings of CoC and right to get the copy of RP approved by the CoC is concerned, it may be noted that the RBI in exercise of its powers conferred under Section 45-IE (1) of RBI Act had superseded the Board of Directors of DHFL, on being satisfied that the DHFL had conducted its affairs detrimental to the interest of its depositors and creditors. The RBI, therefore, had appointed one Shri R. Subramaniakumar – Ex-MD and CEO of the Indian Overseas Bank vide communication dated 20.11.2019. The RBI thereafter, on 29.11.2019, had filed a Company Petition under Section 227 read with Section 239 (2) (zk) of IBC before the NCLT for initiating CIRP proceedings.

104. It may be noted that as per sub-section (4) of Section 45 – (IE) of the RBI Act, on passing of the order of supersession of the Board of Directors of a Non-Banking Financial Company (DHFL), the Chairman, Managing Director and other Directors have to

vacate their offices from the date of supersession of the Board of Directors, and then all the powers, functions and duties, which are required to be exercised by them under the provisions of RBI Act or any other law for the time being in force, have to be exercised and discharged by the Administrator appointed by the RBI, till the Board of Directors of such company is reconstituted.

105. Thus, by virtue of the said provision contained in Section 45-IE and by virtue of the order passed by the RBI thereunder, the Board of Directors of DHFL had stood superseded and their offices also stood vacated on the appointment of the Administrator. Thereafter, on the initiation of CIRP and on the appointment of an Interim Resolution Professional by the Adjudicating Authority, the management of the affairs of the CD had stood vested in the Interim Resolution Professional (the Administrator in this case) and the powers of the Board of Directors of the CD had stood suspended in view of Section 17(1)(b) of the IBC.

106. It may be noted that this is one of the rare cases where the Board of Directors had first stood superseded under the RBI Act, and then the Directors

of the CD - DHFL had stood suspended under the IBC. As such, in our opinion, the legal effects in both the situations would be different, as the "Supersession" of the Board of Directors is very much different from the "Suspension" of the Directors. In common parlance also the use of the word "Supersession" has a different connotation than that of the word "Suspension." As per the Black's Law Dictionary (11th Edition) the word, "Supersede" means to annul, make void or repeal; and the word "Suspend" means to interrupt, postpone, defer, or to temporarily keep a person from performing a function or occupying an office. Thus, the effect of Supersession is permanent in nature, whereas the effect of Suspension is temporary in nature.

107. It is true that as per Section 24 of IBC, the Resolution Professional is required to give a notice of each of the meetings of the CoC to the members of the suspended Board of Directors, alongwith the members of CoC including the Authorized Representatives and the Operational Creditors or their representatives. However, as per sub-section 4 of Section 24, though the Directors of suspended Board of Directors have a right to attend the meetings

of CoC, they do not have any right to vote in such meetings. Meaning thereby, such suspended Directors would have a right only to receive the notice of meetings of CoC and to attend the same, but would not have the right to vote in the meetings.

108. This Court in ***Vijay Kumar Jain vs. Standard Chartered Bank and Others,***[12] while recognizing the rights of the members of the erstwhile Board of Directors to receive a copy of RPs, that may be discussed in the meetings of CoC, has observed as under: -

> "**21.** Under Regulation 24(2)(*e*), the resolution professional has to take a roll call of every participant attending through videoconferencing or other audio and visual means, and must state for the record that such person has received the agenda and all relevant material for the meeting which would include the resolution plan to be discussed at such meeting. Regulation 35 makes it clear that the resolution professional shall provide fair value and liquidation value to every member of the committee *only after receipt of resolution plans* in accordance with the Code [see Regulation 35(2)]. Also, under Regulation 38(1-A), a resolution plan shall include a statement as to how it has dealt with the interest of all stakeholders, and under sub-regulation (3)(a), a resolution plan shall demonstrate that it addresses the cause of default. This Regulation also, therefore, recognises the vital interest of the erstwhile Board of Directors in a resolution plan together

[12] **(2019) 20 SCC 455**

> with the cause of default. It is here that the erstwhile Directors can represent to the Committee of Creditors that the cause of default is not due to the erstwhile management, but due to other factors which may be beyond their control, which have led to non-payment of the debt. Therefore, a combined reading of the Code as well as the Regulations leads to the conclusion that members of the erstwhile Board of Directors, being vitally interested in resolution plans that may be discussed at meetings of the Committee of Creditors, must be given a copy of such plans as part of "documents" that have to be furnished along with the notice of such meetings."

109. In the instant case, however, it deserves to be noted that the RBI having superseded the Board of Directors and appointed the Administrator, the Appellants – Ex-Directors had deemed to have vacated their offices. They having been arrested in connection with the criminal proceedings filed against them, were in the judicial custody all throughout the CIRP proceedings. The said Administrator having initiated the CIRP proceedings, was thereafter continued by the CoC as the Resolution Professional to conduct the CIRP under the provisions contained in the IBC. Under the circumstances, the Appellants – KW and DW, who were the Directors of DHFL at the relevant time, having deemed to have vacated their

offices on the supersession of the Board of Directors under the RBI Act, could not have claimed any right to attend the meetings of CoC or to participate in the CIRP proceedings initiated under the IBC, which right otherwise would have been available to the Directors suspended under the IBC. In absence of any specific provision in the IBC or the Regulations 2016, they, as the members of the superseded Board of Directors, could not have made any claim to have a copy of proposed RPs submitted by the PRAs during the CIRP proceedings. Nonetheless, pertinently the RP after having been approved by the NCLT under Section 31 of IBC, would become a "Public Document" within the meaning of Section 74 of the Indian Evidence Act, and therefore, they would be entitled to get, at the most, a certified copy of the approved RP.

110. In that view of the matter, we do not find any merits in the Appeals filed by the Appellants in this Third Category of Appeals.

(IX) CONCLUSION

111. The upshot of the above discussion and findings is as follows: -

(1) The impugned judgment and order dated 27.01.2022 passed by the NCLAT in Company Appeal Nos. 454-455 and 750 of 2021 is set aside, and the judgment and order dated 07.06.2021 passed by the Adjudicating Authority/ NCLT granting its approval to the Plan Approval Application, and thereby approving the Resolution Plan, is upheld. However, it is clarified and directed that the NCLT shall decide the Avoidance Applications filed by the Administrator under Section 43, 45, and 50, and shall separately decide the Applications under Section 66, and it shall pass the orders in accordance with the powers conferred upon it under Section 44, 48, 49, 50, and under Section 66, as the case may be. The recoveries/benefits that may follow from such Applications shall be appropriated in favour of the CoC in case of Avoidance Applications under Section 43, 45 and 50, and in favour of

SRA-Piramal Capital in case of Applications under Section 66 of IBC.

(2) **The Civil Appeal Nos. 1632-1634 of 2022** filed by the Piramal Capital and Housing Finance Limited and the **Civil Appeal Nos. 2989-2991 of 2022** filed by the Union Bank of India stand allowed.

(3) **The Civil Appeal Nos. 3694-3695 of 2022** filed by 63 Moons Technologies Limited stands disposed of.

(4) **The Appeal arising out of D. No. 6037 of 2022** filed by Raghu K.S. & Others, **Civil Appeal Nos. 2413-2415 of 2022** filed by Vinay Kumar Mittal & Others, **Civil Appeal No. 2396 of 2022** filed by Uttar Pradesh State Power Sector Employees Trust and **Civil Appeal No. 2402 of 2022** filed by Uttar Pradesh State Power Corporation Contributory Provident Fund Trust, **Civil Appeal Nos. 8123-8125 of 2022** filed by Senbagha Vivek A & Another and **Civil Appeal No. 6286 of 2022** filed by THDC India Limited Employee Provident Fund are dismissed.

(5) The **Civil Appeal Nos. 1707-1712 of 2022** filed by Kapil Wadhawan, **Civil Appeal No. 2567 of 2022** filed by Dheeraj Wadhawan and **Civil Appeal Nos. 2987-2988 of 2022** filed by Piramal Capital and Housing Finance Limited are dismissed.

……J.
[BELA M. TRIVEDI]

…….……J.
[SATISH CHANDRA SHARMA]

NEW DELHI;
APRIL 1st, 2025.